

CHALOS, O'CONNOR & DUFFY, LLP  
Attorneys for Plaintiff,  
EASTWIND MARITIME S.A.  
366 Main Street  
Port Washington, New York 11050  
Tel: (516) 767-3600  
Fax: (516) 767-3605  
Owen F. Duffy (OD-3144)  
George E. Murray (GM-4172)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
EASTWIND MARITIME S.A.,

Plaintiff,

08 CV 3292 (HB)

v.

TONNEVOLD REEFER 7 KS,  
a/ka TONNEVOLD REEFER 2 KS,  
a/ka/ TONNEVOLD REEFER 4 KS,  
a/k/a O.T. TONNEVOLD AS,  
a/k/a TONNEVOLD OT,

Defendant.  
-----X

**ATTORNEY'S AFFIDAVIT  
IN OPPOSITION TO  
TONNEVOLD'S MOTION FOR COUNTERSECURITY**

State of New York :  
:ss.  
County of Nassau :

Owen F. Duffy, being duly sworn, states under penalty of perjury as follows:

1. I am a member of the Bar of the State of New York, and I am admitted to practice before this Court.
2. I am a member of the firm of Chalos, O'Connor & Duffy, LLP, attorneys for the Plaintiff, Eastwind Maritime S.A. (hereinafter "Eastwind"), in this action.
3. I am fully familiar with the matters set forth in this affidavit, and my knowledge of the matters set forth in this affidavit is based on information provided to me by Plaintiff Eastwind.

#### **Procedural History**

4. This action was instituted with the filing of a Verified Complaint against defendants on April 2, 2008. *See*, Exhibit 1, Verified Complaint.
5. The Verified Complaint in this action stated a cause of action against the defendant named therein as follows:

7. On December 6, 2006, defendant TONNEVOLD, as owner of the ocean-going vessel M/V THROGULL, entered into a charter party contract with the predecessor in interest of plaintiff EASTWIND, Eco Shipping Ltd., as charterer.

8. That charter party was continued three times with addendums agreed to between plaintiff EASTWIND and defendant TONNEVOLD with no mention of the Eco Shipping Ltd. thus effectually novating the charter party and making them each a maritime contract between EASTWIND and TONNEVOLD.

9. The third addendum continuing the charter party between the parties, Addendum No. 3 dated July 19, 2007, was a maritime contract for the continuation of the charter party whereby plaintiff EASTWIND hired the M/V THORGULL to carry a cargo of cocoa being shipped from Panjang, Malaysia to Buenaventura, Colombia.

10. The charter party contract between plaintiff EASTWIND and defendant TONNEVOLD is a maritime contract.

11. Throughout the course of the charter and, particularly so, with respect to the voyage from Penjang to Buenaventura, the plaintiff Eastwind made regular and timely hire payments to the defendant Tonnevold.

12. At the conclusion of the charter, and consistent with a final accounting that took into account deductions of hire for off-hire periods,

allowances for fuel used while off-hire, fuel that had been supplied to the vessel by Eastwind and other miscellaneous deductions for expenses that were for the account of the vessel Owner, there was a balance due and owing to the charterer, plaintiff EASTWIND, of US\$180,946.04, plus an additional US\$116,802.00 that represented an over consumption of fuel used by the vessel from what the vessel's fuel consumption was represented to be in the charter party.

13. Despite due demand, the defendant TONNEVOLD has failed to pay the \$297,748.04 that is due and owing to the plaintiff EASTWIND pursuant to the terms of the charter party.

14. TONNEVOLD's failure to make timely payment of the outstanding balance when it became due constitutes a breach of the charter party and, therefore, plaintiff EASTWIND has a maritime claim against the defendant TONNEVOLD for breach of charter party in the principal amount of \$297,748.04.

15. The charter party contract between EASTWIND and TONNEVOLD provides, at Clause 22, that any disputes arising out of the maritime contract shall be governed by English law and shall be referred to arbitration in London.

16. Interest and costs, including attorneys' fees, are routinely awarded to the prevailing party in London arbitration because they are recoverable damages in arbitration pursuant to the London Maritime Arbitration Association's rules.

17. In accordance with the terms and conditions of the charter party, the plaintiff EASTWIND is preparing to initiate arbitration proceedings against defendant TONNEVOLD in London.

18. As best as can now be estimated, the plaintiff EASTWIND expects to recover the following amounts in London arbitration from defendant TONNEVOLD:

A.	Principal claim	\$297,748.04
B.	Estimated interest on claims: 3 years at 8%, compounded quarterly	\$ 79,868.44
C.	Estimated attorneys' fees:	\$ 50,000.00
D.	Estimated arbitration costs/expenses:	\$ 25,000.00
<b>Total</b>		<b>\$452,616.48</b>

See, Exhibit 1, at ¶'s 7 – 18.

6. In connection with the Verified Complaint, and, because the Defendant was not present within the Southern District of New York, Plaintiff Eastwind requested the issuance of a Process of Maritime Attachment to obtain security for its maritime claim.

7. On April 2, 2008, this Court issued an Order for Issuance of a Process of Maritime Attachment in the case at hand. *See*, Exhibit 2, Order for Issuance of a Process of Maritime Attachment.

8. In accordance with the Order of this Court, the Clerk of the Court issued a Process of Maritime Attachment and Garnishment against Defendant Tonnevold up and to the amount sued for, *to wit*, \$452,616.48.

9. After serving the Process of Maritime Attachment on various garnishees within the District, garnishee JPMorgan Chase Bank restrained \$176,913.93 on or about April 14, 2008, as funds in which the Defendant Tonnevold has an interest.

10. Additionally, on or about April 16, 2008 garnishee Citibank restrained an additional \$8,525.00 as funds in which Defendant Tonnevold has an interest.

11. Additionally, on or about April 18, 2008 garnishee Citibank restrained an additional \$2,195.15 as funds in which Defendant Tonnevold has an interest.

12. At the present time, the Plaintiff Eastwind has restrained the property of the Defendant Tonnevold in the amount of \$187,634.08 as security for its claim of \$452,616.48.

13. In accordance with Rule B(2) and local rule B.2, Plaintiff Eastwind promptly notified Defendant Tonnevold following each of these attachments. *See*, Exhibit 3, Notices of Attachment dated April 14, 2008, April 17, 2008 and April 18, 2008.

14. On April 18, 2008, Defendant Tonnevold filed an Answer and a Counterclaim in the amount of \$836,601.22 with this Court. *See*, Exhibit 4, Verified Answer and Counter-Claim, at Prayer for Relief ¶ 3.

15. Defendant Tonnevold's Counter-Claim specifically states that it is being made against Eastwind and non-party ECo Shipping Ltd. *See*, Exhibit 4, Verified Answer and Counter-Claim, at page 5, in a paragraph preceding ¶ 33, "As for its Counter-claim against Eastwind and ECo, Tonnevold alleges as follows."

16. Also on April 18, 2008, Defendant Tonnevold filed a Notice of Motion, requesting an Order from this Court directing "Plaintiff Eastwind Maritime S.A. to give security to Tonnevold for the damages demanded in Tonnevold's counter-claim within 10 days from the issuance of the Order." *See*, Exhibit 5, Notice of Motion.

#### **Basis of the Counterclaim**

17. After due investigation it became clear that the basis for the counterclaim of Defendant Tonnevold in the case at hand was a matter currently being arbitrated between Defendant Tonnevold and non-party ECo Shipping Ltd. in New York arbitration.

18. Plaintiff Eastwind now hereby submits a declaration from counsel representing non-party ECo Shipping Ltd. (hereinafter "ECo") in the arbitration proceeding where Defendant Tonnevolds' counterclaim is already pending. *See*, Exhibit 6, Declaration of John G. Poles.

19. Plaintiff Eastwind is not a party to the arbitration in New York between Tonnevold and ECo. *See*, Exhibit 6, Declaration of John G. Poles, at ¶ 1.

20. While Defendant Tonnevold alleges that non-party ECo is the alter ego of Plaintiff Eastwind, it did not name Eastwind when it instituted the arbitration action against ECo. *See*, Exhibit 6, Declaration of John G. Poles, at ¶ 9.

21. Non-party ECo has not been served with legal process in the case at hand, and it is not a party to the case at hand.

22. The counterclaim being alleged by Defendant Tonnevold in this action does not arise from the transaction of the occurrence that is the subject of the case at hand. *See*, Exhibit 6, Declaration of John G. Poles, at ¶ 2.

23. The action in the case at hand is based on claims regarding the overpayment of hire and overconsumption of fuel, *see* Verified Complaint at ¶s 9 to 13; whereas, the claim against non-party ECo made by Tonnevold in New York arbitration, which is the basis for Tonnevold's counterclaim, rests on the allegation that ECo illegally loaded "red fish." *See*, Exhibit 6, Declaration of John G. Poles, at ¶ 5.

24. The counterclaim is based on an entirely different charter party contract and pooling agreement than is Plaintiff Eastwind's claim. *See*, Exhibit 6, Declaration of John G. Poles, at ¶ 5.

25. The charter party contract which is the basis for the case at hand provides for London arbitration whereas the charter party contract which is the basis for the counterclaim calls for New York arbitration (which arbitration has commenced and is currently being litigated by Defendant Tonnevold and non-party ECo). *See*, Exhibit 6, Declaration of John G. Poles, at ¶s 6 and 8.

26. The dispute that is the basis of both the counterclaim and the New York arbitration between Defendant Tonnevold and non-party ECo has no factual allegations,

circumstances or occurrences in common with the case at hand. It is described more fully in the Declaration of John G. Poles. *See*, Exhibit 6, Declaration of John G. Poles, at ¶ 9.

27. The differences between the two actions are more fully detailed in the Declaration of John G. Poles. *See*, Exhibit 6, Declaration of John G. Poles, at ¶ 10 – 12.

28. The differences between the two actions are summarized in the Declaration of John G. Poles. *See*, Exhibit 6, Declaration of John G. Poles, at page 5.

**Inaccurate Claims made in by Defendant Tonnevold**

29. Defendant Tonnevold alleges in its counterclaim that Plaintiff Eastwind is the alter ego of non-party ECo. *See*, Exhibit 4, Verified Answer and Counter-claim, at ¶'s 49 – 61.

30. However Plaintiff Eastwind and ECo are separate and distinct corporate entities deserving of the presumption of corporate separateness provided to all corporations and Defendant Tonnevold's allegations are insufficient to overcome that presumption. *See*, Williams v. McAllister Bros., Inc., 534 F.2d 19, 21 (2d Cir. 1976)

31. Furthermore, Defendant Tonnevold's allegations that Plaintiff Eastwind was involved in the subject matter of the counterclaims is entirely belied by the fact that Eastwind was not made a party to the New York Arbitration instituted by Defendant Tonnevold against non-party ECo.

32. Finally, it is important to carefully review the evidence submitted by Defendant Tonnevold in this matter. Defendant Tonnevold continually refers to the charter party that is the basis of the case at hand as the "Mitigating Charter." *See*, Exhibit 7, Declaration of Jan Sigvart Walle in Support of Defendant's Motion for Counter-security

pursuant to Supplemental Rule E(7) (hereinafter referred to as "Declaration of Walle"), at ¶ 13.

33. However, the Charter Party submitted by Defendant Tonnevold makes no reference to it being made in mitigation, nor does it refer to any of the facts alleged in the counterclaim. *See*, Exhibit 7, Declaration of Walle at Exhibit 2.

34. Furthermore, while Defendant Tonnevold admits that there were three addenda to the Charter Party that is at issue in the case at hand, and claims that they "identify Eastwind (acting on behalf of ECo)" the three addenda do not name ECo at all, state that Plaintiff Eastwind is the "charterer" and make no reference to Eastwind acting on behalf of anyone else or acting in mitigation of any matter whatsoever. *See*, Exhibit 8, the three addenda to the Charter Party of December 6, 2006, Addendum No. 3 being the charter party that is the basis of the case at hand.

35. Addendum No. 3, which was signed by a representative of Defendant O.T. Tonnevold AS as manager for Defendant Tonnevold Reefer 2 KS, specifically states that the contract is between Eastwind and Tonnevold Reefer 2 KS and specifies the terms of the contract, referring only to "otherwise terms as per Charter Party dated 6<sup>th</sup> December, 2006." *See*, Exhibit 8, the three addenda to the Charter Party of December 6, 2006, at Addendum No. 3.

36. Finally, it is important to note that Defendant Tonnevold alleges that an Eastwind representative stated that the M/V THORGULL, "while leaving Pooling Agreement 02, would be chartered by Eastwind, on behalf of ECo, in an effort to keep the Vessel working even during the blacklist period." *See*, Exhibit 7, Declaration of Walle, at ¶ 16.



37. As evidence of this claim, Mr. Walle attaches as an exhibit email exchanges which make no reference to Eastwind keeping the MV Thorgull working during the blacklist period. *See*, Exhibit 7, Declaration of Walle, at Exhibit 3.

38. Mere unsupported allegations that these two matters involve the same transaction or occurrence are insufficient to support the awarding of countersecurity pursuant to Rule E(7) as the evidence that has been submitted indicates that the counterclaim involves different laws, different jurisdictions for arbitration, different charter party contracts, one pursuant to a pooling agreement and the other independent of the pooling agreement, and a wholly different subject matter.

#### **Conclusion**

39. On the basis of the foregoing, it is respectfully submitted that the subject matter of the counterclaim of the counterclaimant Defendant Tonnevold is for a transaction or occurrence that is separate and distinct from the subject matter of the Verified Complaint in the case at hand, and therefore the counterclaimant should not be granted security pursuant to Supplemental Rule E(7) in the case at hand for its claims which are currently being arbitrated in New York.

Dated: Port Washington, New York  
May 28, 2008

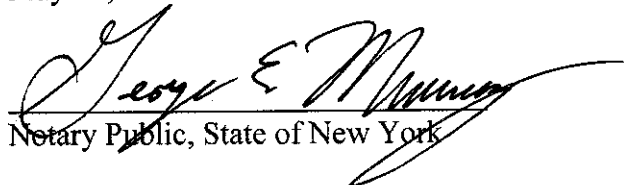
CHALOS O'CONNOR & DUFFY, LLP  
Attorneys for Plaintiff  
EASTWIND MARITIME S.A.

By:

  
Owen F. Duffy (OL-3144)  
366 Main Street

Port Washington, New York  
11050  
Tel: 516-767-3600  
Telefax: 516-767-3605  
Email: [ofd@codus-law.com](mailto:ofd@codus-law.com)

Subscribed and sworn to before me this  
May 28, 2008



Notary Public, State of New York

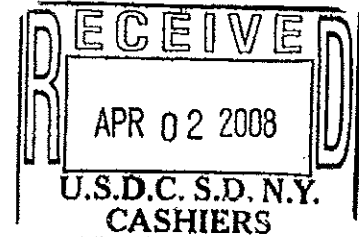
**GEORGE E. MURRAY**  
**Notary Public, State of New York**  
**No. 02MU6108120**  
**Qualified in New York County**  
**Commission Expires April 12, 2008**  
2012

# EXHIBIT 1

**JUDGE BAER**

**08 CV 03292**

CHALOS, O'CONNOR & DUFFY, LLP  
Attorneys for Plaintiff,  
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Owen F. Duffy (OD-3144)  
George E. Murray (GM-4172)



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
EASTWIND MARITIME S.A.,

Plaintiff,

08 CV \_\_\_\_ ( )

v.

**VERIFIED COMPLAINT**

TONNEVOLD REEFER 7 KS,  
a/ka TONNEVOLD REEFER 2 KS,  
a/ka/ TONNEVOLD REEFER 4 KS,  
a/k/a O.T. TONNEVOLD AS,  
a/k/a TONNEVOLD OT,

Defendant.

-----X

Plaintiff EASTWIND MARITIME S.A. (hereinafter "EASTWIND"), by its attorneys, Chalos, O'Connor & Duffy, as and for its Verified Complaint against the Defendant, TONNEVOLD REEFER 7 KS a/ka TONNEVOLD REEFER 2 KS a/ka TONNEVOLD REEFER 4 KS a/ka/ O.T. TONNEVOLD AS, a/k/a TONNEVOLD OT (hereinafter referred to collectively as "TONNEVOLD"), alleges upon information and belief as follows:

### JURISDICTION

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure, and the district court has original subject matter jurisdiction, exclusive of the states, pursuant to 28 U.S.C. § 1333.

### THE PARTIES

2. At all times material hereto, Plaintiff EASTWIND was and still is a foreign business entity duly organized and existing pursuant to the laws of a foreign country, but operating from the offices of the Eastwind Group in the United States at 444 Madison Avenue, New York, New York, 10022.

3. The plaintiff EASTWIND is engaged in the business of chartering and operating vessels for the carriage of goods by sea.

4. At all times material hereto, the defendant TONNEVOLD was and still is a foreign business entity duly organized and existing pursuant to the laws of Norway with a place of business at 1 Odden, Grimstad, Norway.

5. The defendant TONNEVOLD is the registered owner of the vessel M/V THORGULL, and the primary business of TONNEVOLD is to charter the M/V THORGULL to others for the carriage of cargo in exchange for payments of hire or freight.

6. The underlying maritime contract described hereinafter was originally entered into by the defendant TONNEVOLD under the name of Tonnevold Reefer 7 KS, but TONNEVOLD has at various times referred to itself as Tonnevold Reefer 2 KS, O.T. Tonnevold AS and Tonnevold OT such that each of those other names are aliases or they

are the alter ego of the registered Owner of the M/V THORGULL and, therefore, each of them is a party to the underlying maritime contract or, otherwise, liable for the debts of Tonnevold Reefer 7 KS pursuant to the underlying maritime contract.

AS AND FOR A CAUSE OF ACTION  
FOR BREACH OF MARITIME CONTRACT

7. On December 6, 2006, defendant TONNEVOLD, as owner of the ocean-going vessel M/V THROGULL, entered into a charter party contract with the predecessor in interest of plaintiff EASTWIND, Eco Shipping Ltd., as charterer.

8. That charter party was continued three times with addendums agreed to between plaintiff EASTWIND and defendant TONNEVOLD with no mention of the Eco Shipping Ltd. thus effectually novating the charter party and making them each a maritime contract between EASTWIND and TONNEVOLD.

9. The third addendum continuing the charter party between the parties, Addendum No. 3 dated July 19, 2007, was a maritime contract for the continuation of the charter party whereby plaintiff EASTWIND hired the M/V THORGULL to carry a cargo of cocoa being shipped from Panjang, Malaysia to Buenaventura, Colombia.

10. The charter party contract between plaintiff EASTWIND and defendant TONNEVOLD is a maritime contract.

11. Throughout the course of the charter and, particularly so, with respect to the voyage from Penjang to Buenaventura, the plaintiff Eastwind made regular and timely hire payments to the defendant Tonnevold.

12. At the conclusion of the charter, and consistent with a final accounting that took into account deductions of hire for off-hire periods, allowances for fuel used

while off-hire, fuel that had been supplied to the vessel by Eastwind and other miscellaneous deductions for expenses that were for the account of the vessel Owner, there was a balance due and owing to the charterer, plaintiff EASTWIND, of US\$180,946.04, plus an additional US\$116,802.00 that represented an over consumption of fuel used by the vessel from what the vessel's fuel consumption was represented to be in the charter party.

13. Despite due demand, the defendant TONNEVOLD has failed to pay the \$297,748.04 that is due and owing to the plaintiff EASTWIND pursuant to the terms of the charter party.

14. TONNEVOLD's failure to make timely payment of the outstanding balance when it became due constitutes a breach of the charter party and, therefore, plaintiff EASTWIND has a maritime claim against the defendant TONNEVOLD for breach of charter party in the principal amount of \$297,748.04.

15. The charter party contract between EASTWIND and TONNEVOLD provides, at Clause 22, that any disputes arising out of the maritime contract shall be governed by English law and shall be referred to arbitration in London.

16. Interest and costs, including attorneys' fees, are routinely awarded to the prevailing party in London arbitration because they are recoverable damages in arbitration pursuant to the London Maritime Arbitration Association's rules.

17. In accordance with the terms and conditions of the charter party, the plaintiff EASTWIND is preparing to initiate arbitration proceedings against defendant TONNEVOLD in London.

18. As best as can now be estimated, the plaintiff EASTWIND expects to recover the following amounts in London arbitration from defendant TONNEVOLD:

A.	Principal claim	\$297,748.04
B.	Estimated interest on claims: 3 years at 8%, compounded quarterly	\$ 79,868.44
C.	Estimated attorneys' fees:	\$ 50,000.00
D.	Estimated arbitration costs/expenses:	\$ 25,000.00
<b>Total</b>		<b>\$452,616.48</b>

PRAYER FOR RELIEF

19. Notwithstanding the fact that the liability of the defendant is subject to determination by arbitration in London, there are now, or will be during the pendency of this action, certain assets, accounts, freights, monies, charter hire, credits, effects, payment for bunkers, goods or services, bills of lading, cargo and the like belonging to or claimed by the defendant within this District and held by various parties, as garnishees.

20. Plaintiff EASTWIND believes that some of these assets, *to wit*: bank accounts; freight and/or hire payments from other charterers or shippers of cargo; and/or Clearing House Interbank Payment System (CHIPS) credits; and/or funds being transferred through intermediary banks are located in this District in the possession of garnishees, namely banks or financial institutions located in New York.

21. As set forth in the accompanying affidavit of Owen F. Duffy, the defendant cannot be found within this District within the meaning of Rule B of the



Supplemental Rules for Admiralty or Maritime Claims of the Federal Rules of Civil Procedure.

221. Because this Verified Complaint sets forth an *in personam* maritime claim against the defendant and because the defendant cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Admiralty or Maritime Claims of the Federal Rules of Civil Procedure, the requirements for a Rule B attachment and garnishment are met and Plaintiff seeks the issuance of process of maritime attachment so that it may obtain security for its claims against the defendant and/or *quasi in rem* jurisdiction over the property of the defendant so that an eventual judgment and/or award can be satisfied.

WHEREFORE, Plaintiff prays as follows:

A. That the defendant be summoned to appear and answer this Verified Complaint;

B. That the defendant not being found within this District, as set forth in the Affidavit of Owen F. Duffy, then all of its assets, accounts, freights, monies, charter hire, credits, effects, payment for bunkers, goods or services, bills of lading, cargo and the like belonging to or claimed by the defendant within this District up to the amount sued for herein be attached pursuant to Supplemental Rule B and to pay Plaintiff's damages;

C. That this Court retain jurisdiction over this matter through the entry of a judgment either by this Court, and/or the London arbitration panel, so that judgment may be entered in favor of Plaintiff for the amount of its claim with costs, *i.e.* \$452,616.48,

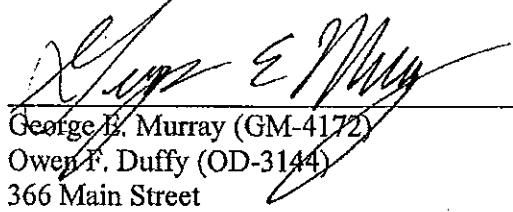
and that a judgment of condemnation and sale be entered against the property arrested and attached herein in the amount of Plaintiff's claim, plus costs to be paid out of the proceeds thereof; and

D. That Plaintiff has such other and further relief as the Court may determine to be just and proper under the circumstances.

Dated: Port Washington, New York  
April 2, 2008

CHALOS, O'CONNOR & DUFFY, LLP  
Attorneys for Plaintiff,  
EASTWIND MARITIME S.A.

By:



George E. Murray (GM-4172)  
Owen F. Duffy (OD-3144)  
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Owen F. Duffy (OD-3144)  
George E. Murray (GM-4172)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
EASTWIND MARITIME S.A.,

Plaintiff,

08 CV \_\_\_\_ (\_\_\_\_)

v.

**VERIFICATION**

TONNEVOLD REEFER 7 KS,  
a/ka TONNEVOLD REEFER 2 KS,  
a/ka/ TONNEVOLD REEFER 4 KS,  
a/k/a O.T. TONNEVOLD AS,  
a/k/a TONNEVOLD OT,

Defendant.

-----X  
STATE OF NEW YORK :  
: ss.  
COUNTY OF NASSAU :

BEFORE ME, the undersigned authority, personally came and appeared George  
E. Murray, who, after being duly sworn, did depose and state:

1. That he is an associate in the law firm of Chalos, O'Connor & Duffy LLP,  
counsel for the Plaintiff, EASTWIND MARITIME S.A., herein;
2. That he has read the foregoing complaint and knows the contents thereof;

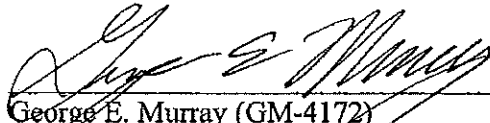
3. That he believes the matters to be true based on documents and information obtained from employees and representatives of the Plaintiff through its agents, underwriters and attorneys; and

4. That the reason that this verification was made by deponent and not by the Plaintiff is because the officers' verification of Plaintiff could not be obtained within the time constraints presented by the circumstances of this case.

Dated: Port Washington, New York  
April 2, 2008

CHALOS, O'CONNOR & DUFFY, LLP  
Attorneys for Plaintiff,  
EASTWIND MARITIME S.A.

By:

  
George E. Murray (GM-4172)  
366 Main Street  
Port Washington, New York 11050  
Tel: (516) 767-3600  
Fax: (516) 767-3605

Subscribed and sworn to before me this  
April 2, 2008

  
\_\_\_\_\_  
Notary Public, State of New York

TIMOTHY SEMENORO  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 02SE6112804  
QUALIFIED IN NASSAU COUNTY  
COMMISSION EXPIRES JULY 12, 2008

# EXHIBIT 2

10-1-2008

08 CV 03292

SATER, J

CHALOS, O'CONNOR & DUFFY, LLP  
Attorneys for Plaintiff,  
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George E. Murray (GM-4172)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 4/2/08
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-----X  
EASTWIND MARITIME S.A.,

Plaintiff,

v.

TONNEVOLD REEFER 7 KS,  
a/ka TONNEVOLD REEFER 2 KS,  
a/ka/ TONNEVOLD REEFER 4 KS,  
a/k/a O.T. TONNEVOLD AS,  
a/k/a TONNEVOLD OT,

Defendant.  
-----X

08 CV \_\_\_\_ ( )

**ORDER FOR ISSUANCE  
OF A PROCESS OF  
MARITIME ATTACHMENT**

Upon reading the Verified Complaint requesting issuance of Process of Maritime Attachment and Garnishment, and the Affidavit of George E. Murray, Esq. attached thereto, and the Court finding that the conditions for an attachment under Rule B of the Supplemental Rules for Admiralty or Maritime Claims to the Federal Rules of Civil Procedure appear to exist, it is this day, by the United States District Court for the Southern District of New York, hereby

**ORDERED** that the Clerk shall issue a Process of Maritime Attachment and Garnishment as prayed for in the Verified Complaint; and it is further

**ORDERED** that the Process of Attachment issued by the Clerk shall be against all property, tangible or intangible, including funds, goods, chattels, credits, effects, debts

owned by or owed to the Defendant EASTWIND MARITIME S.A., or monies to be paid to discharge a debt owed to the Defendant, including monies being electronically transferred by or to TONNEVOLD REEFER 7 KS, a/ka TONNEVOLD REEFER 2 KS, a/ka/ TONNEVOLD REEFER 4 KS, a/k/a O.T. TONNEVOLD AS, a/k/a TONNEVOLD OT which are in the possession or control of, or being transferred through any garnishee within this District, including, without limitation, property held by or in the possession or control of the following garnishee(s):

1. ABN AMRO Bank N.V.  
55 East 52<sup>nd</sup> Street  
New York, New York 10055
2. American Express Bank Ltd.  
c/o Zeichner Ellman & Krause, LLP  
Legal Counsel for Bank of America  
575 Lexington Avenue, 10<sup>th</sup> floor  
New York, New York 10022
3. Bank of America, National Association  
c/o Zeichner Ellman & Krause, LLP  
Legal Counsel for Bank of America, N.A.  
575 Lexington Avenue, 10<sup>th</sup> floor  
New York, New York 10022
4. Bank of China  
410 Madison Avenue  
New York, New York 10017
5. Bank of New York Mellon  
120 Broadway, 19<sup>th</sup> Floor  
New York, New York
6. Citibank, N.A.  
Legal Service Intake Unit  
1 Court Square, 7<sup>th</sup> Floor  
Long Island City, NY 11120
7. Deutsche Bank Trust Company Americas  
60 Wall Street  
New York, New York 10005

8. DnB NOR Bank ASA  
200 Park Avenue, (31st Floor)  
New York, NY 10022 0396
9. HSBC Bank U.S.A., National Association  
452 Fifth Avenue  
New York, New York
10. JPMorgan Chase Bank, National Association  
One Chase Manhattan Plaza  
New York, New York 10081
11. Nordea Bank Finland Plc  
437 Madison Avenue  
New York, NY 10022 7001
12. Nordea Bank Norge ASA  
437 Madison Avenue  
New York, NY 10022 7001
13. Skandinaviska Enskilda Banken  
245 Park Avenue  
New York, NY 10167 0061
14. Standard Chartered Bank  
One Madison Avenue  
New York, NY 10010
15. Swedbank New York Branch  
One Penn Plaza, 15<sup>th</sup> Floor  
New York, New York 10119
16. UBS AG  
299 Park Avenue  
New York, New York, 10017
17. Wachovia Bank, National Association  
11 Penn Plaza  
New York, New York 10001

or any of their affiliates and any other garnishee(s) within this district upon whom a copy of the Process of Maritime Attachment and Garnishment herein may be served, in an amount up to the amount sued for, *i.e.*, **\$452,616.48**, it is further



**ORDERED** that any person claiming an interest in the property attached or garnished pursuant to said Order shall, upon application to the Court, be entitled to a prompt hearing at which the plaintiff shall be required to show why the attachment and garnishment should not be vacated or other relief granted, and it is further

**ORDERED** that a copy of this Order be attached to and served with the said Process of Maritime Attachment and Garnishment, and it is further

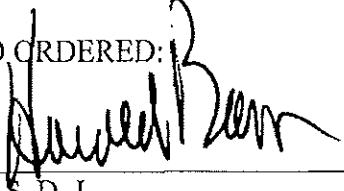
**ORDERED** that pursuant to Fed. R. Civ. P., Supplemental Rules for Certain Admiralty and Maritime Claims, Rule B(1)(d)(ii)(C), the Writ of Attachment may be served by any person, who is not less than 18 years old, and who is not a party to this action, and it is further

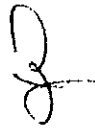
**ORDERED** that service on any garnishee(s) (i.e. any original garnishee or any garnishee hercin) is deemed to be effective and continuous service throughout the remainder of the day upon which such service is made commencing from the time of such service through the opening of the garnishee's business the next business day, and it is further

**ORDERED** that pursuant to Federal Rule of Civil Procedure 5(b)(2)(D), that following initial service upon any garnishee by the United States Marshal or any other person designated by Order to make service in this action, supplemental service of the Process of Maritime Attachment and Garnishment shall thereafter be made by way of service of a copy of the Process of Maritime Attachment and Garnishment via facsimile transmission or other verifiable electronic means, including e-mail, to each garnishee so personally served, and it is further

**ORDERED** that supplemental process enforcing this Order may be issued by the Clerk and served without further Order of the Court.

Dated: New York, New York  
April 2, 2008

SO ORDERED:  
  
\_\_\_\_\_  
U. S. D. J.



# EXHIBIT 3

# CHALOS, O'CONNOR & DUFFY

ATTORNEYS AT LAW

Michael G. Chalos  
Eugene J. O'Connor  
George M. Chalos  
Owen F. Duffy  
Leroy S. Corsa  
Timothy Semenoro\*  
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366 MAIN STREET  
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WEBSITE: WWW.CODUS-LAW.COM

Owen F. Duffy  
Partner  
ofd@codus-law.com

\*Admitted in NY & NJ

April 14, 2008

Tonnevold Reefer 7 KS  
1 Odden  
4891 Grimstad  
Norway  
Tel.: +47 37 25 89 00

Via DHL

Re: Eastwind Maritime S.A, v. Tonnevold Reefer 7 KS  
S.D.N.Y. Index No. 08 CV 3292 (HB)  
Our ref.: 500115.019

## Notice of Lawsuit and Maritime Attachment

Dear Sirs:

We are New York attorneys, who represent Eastwind Maritime S.A. in the above-referenced matter.

The purpose of this letter is to provide you with Notice of a Lawsuit that has been commenced by Eastwind Maritime S.A. against Tonnevold Reefer 7 KS in the U.S. District Court for the Southern District of New York. Additionally, the purpose of this letter is to provide you with Notice, in accordance with Fed. R. Civ. P. Supplemental Rule B(2), that property belonging to Tonnevold Reefer 7 KS is being restrained pursuant to Process of Maritime Attachment issued by the U.S. District Court for the Southern District of New York. The property, *i.e.* money, has been restrained, and will be held pursuant to the Court's Order, to secure the claim asserted by Eastwind Maritime S.A. against Tonnevold Reefer 7 KS for security in Eastwind Maritime S.A.'s dispute with Tonnevold Reefer 7 KS regarding its breach of the charter party dated December 6, 2006 and its three addenda, between Eastwind Maritime S.A. and Tonnevold Reefer 7 KS for the ship the M/V THORGULL.

CHALOS, O'CONNOR & DUFFY LLP

In order to protect our client's rights in this matter, we have initiated a lawsuit against Tonnevold Reefer 7 KS in the U.S. District Court for the Southern District of New York. Briefly stated, the lawsuit in New York was initiated to make use of the Supplemental Rules for Admiralty or Maritime Claims, which provide for a Maritime Attachment procedure whereby a defendant's assets can be attached to obtain security or satisfy an award that arises out of another legal proceeding such as arbitration in London.

The purpose of this letter is to provide you with formal Notice of the Lawsuit and Notice of the Attachment as required by Rule B(2) of the Supplemental Rules for Admiralty or Maritime Claims.

Accordingly, **PLEASE TAKE NOTICE** that the lawsuit filed by Eastwind Maritime S.A. against Tonnevold Reefer 7 KS in New York is as follows:

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
EASTWIND MARITIME S.A.,

Plaintiff,

08 CV 3292 (HB)

v.

TONNEVOLD REEFER 7 KS,  
a/ka TONNEVOLD REEFER 2 KS,  
a/ka/ TONNEVOLD REEFER 4 KS,  
a/k/a O.T. TONNEVOLD AS,  
a/k/a TONNEVOLD OT,

Defendant.

-----X

Copies of the relevant pleadings that were filed in the case to obtain Process of Maritime Attachment and the Court's Orders are attached herewith for your guidance. These enclosed documents are the following:

1. Verified Complaint, with Request for Issuance of Maritime Attachment and Garnishment, dated April 2, 2008;
2. Order for Issuance of a Process of Maritime Attachment, dated April 2, 2008; and
3. Process of Maritime Attachment and Garnishment, dated April 2, 2008.

Also attached is an original Summons for you to serve upon the Plaintiff's attorney an Answer in this action within thirty (30) days after receiving this letter, exclusive of the day of receipt. If you fail to serve an Answer upon the Plaintiff's attorney, judgment by default will be taken against you for the relief demanded in the Verified Complaint. You must also file your Answer with the Clerk of this Court within a reasonable period of time after service.

**PLEASE TAKE FURTHER NOTICE** that the Process of Maritime Attachment has been executed in that the Process of Maritime Attachment was served, among others, on JPMorgan Chase Bank. This garnishee-bank has confirmed that it is holding funds belonging to Tonnevold Reefer 7 KS in accordance with the Process of Maritime Attachment. The money that has been attached was \$176,913.93 with the originator being Dreamship Pte. Ltd. and the intended beneficiary being Tonnevold Reefer 7 KS.

The total amount that is presently being restrained, \$176,913.93, is insufficient to fully secure Eastwind Maritime S.A.'s claim in this matter. As such we are continuing to serve the Process of Maritime Attachment on JPMorgan Chase Bank and other banks in New York so as to restrain any further funds that are being electronically transferred to or from Tonnevold Reefer 7 KS.

As set forth in Supplemental Rule E (4)(f), any person claiming an interest in such property is entitled to a prompt hearing at which the plaintiff shall be required to show why the attachment should not be vacated or other relief granted consistent with the rules. We are, however, of the firm view that there are no grounds for the attachment to be vacated.

Alternatively, whenever Process of Maritime Attachment and Garnishment is issued, the execution of such process shall be stayed, or the property released, on the giving of security, to be approved by the court or clerk, or by the stipulation of the parties, conditioned to answer the

judgment of the court or any appellate court. The parties may stipulate the amount and nature of such security.

Under the circumstances, if you are interested in providing alternate security so as to release the attachment over its funds being held by the garnishee-bank, then I ask that you or your legal counsel contact the undersigned. If we fail to hear from you, we will eventually proceed to execute on such funds.

I thank you for your attention to this matter, and I look forward to hearing from you.

Very truly yours,

CHALOS, O'CONNOR & DUFFY, LLP



Owen F. Duffy

Encl. \*\*\*\*  
OFD:gem

# CHALOS, O'CONNOR & DUFFY

ATTORNEYS AT LAW

Michael G. Chalos  
Eugene J. O'Connor  
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Owen F. Duffy  
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Owen F. Duffy  
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ofd@codus-law.com

\*Admitted in NY & NJ

April 17, 2008

O.T. Tonnevold AS  
1 Odden  
4891 Grimstad  
Norway  
Tel.: +47 37 25 89 00

Via DHL

Re: Eastwind Maritime S.A. v. Tonnevold Reefer 7 KS  
S.D.N.Y. Index No. 08 CV 3292 (HB)  
Our ref.: 500115.019

## Notice of Additional Funds Restrained pursuant to Maritime Attachment

Dear Sirs:

As you know, we are New York attorneys who represent Eastwind Maritime S.A. in the above-referenced matter.

We provided you by letter dated April 14, 2008 with Notice of a Lawsuit that has been commenced by Eastwind Maritime S.A. against Tonnevold Reefer 7 KS, also known as O.T. Tonnevold AS, in the U.S. District Court for the Southern District of New York. Additionally, we provided you Notice, in accordance with Fed. R. Civ. P. Supplemental Rule B(2), that property belonging to Toonevold Reefer 7 KS is being restrained pursuant to Process of Maritime Attachment issued by the U.S. District Court for the Southern District of New York. The property, *i.e.* money, has been restrained, and will be held pursuant to the Court's Order, to secure the claim asserted by Eastwind Maritime S.A. against Tonnevold Reefer 7 KS regarding its breach of the charter party dated December 6, 2006 and its three addenda, between Eastwind Maritime S.A. and Tonnevold Reefer 7 KS for the ship the M/V THORGULL.

CHALOS, O'CONNOR & DUFFY LLP



We now write to you so that you may,

**PLEASE TAKE FURTHER NOTICE** that the Process of Maritime Attachment has been executed in that the Process of Maritime Attachment was served, among others, on Citibank. This garnishee bank has confirmed that they are holding funds belonging to O.T. Tonnevold AS in accordance with the Process of Maritime Attachment. Citibank restrained \$8,525.00 on April 16, 2008 and informed us of this attachment on April 17, 2008.

As such the \$8,525.00 has been restrained in this matter. This is in addition to the \$176,913.93 which we informed you of in our letter of April 14, 2008.

The total amount that is presently being restrained, \$185,438.93, is insufficient to fully secure Eastwind Maritime S.A.'s claim of \$452,616.48. As such we are continuing to serve the Process of Maritime Attachment on Citibank and other banks in New York so as to restrain any further funds that are being electronically transferred to or from Tonnevold Reefer 7 KS or any of its aliases.

As set forth in Supplemental Rule E (4)(f), any person claiming an interest in such property is entitled to a prompt hearing at which the plaintiff shall be required to show why the attachment should not be vacated or other relief granted consistent with the rules. We are, however, of the firm view that there are no grounds for the attachment to be vacated.

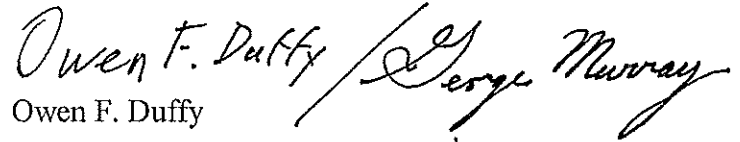
Alternatively, whenever Process of Maritime Attachment and Garnishment is issued, the execution of such process shall be stayed, or the property released, on the giving of security, to be approved by the court or clerk, or by the stipulation of the parties, conditioned to answer the judgment of the court or any appellate court. The parties may stipulate the amount and nature of such security.

Under the circumstances, if you are interested in providing alternate security so as to release the attachment over its funds being held by the garnishee-bank and to prevent the attachment of additional funds, then I ask that you or your legal counsel contact the undersigned. If we fail to hear from you, we will eventually proceed to execute on such funds.

I thank you for your attention to this matter, and I look forward to hearing from you.

Very truly yours,

CHALOS, O'CONNOR & DUFFY, LLP

  
Owen F. Duffy

OFD:gem

# CHALOS, O'CONNOR & DUFFY

ATTORNEYS AT LAW

Michael G. Chalos  
Eugene J. O'Connor  
George M. Chalos  
Owen F. Duffy  
Leroy S. Corsa  
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Owen F. Duffy  
Partner  
ofd@codus-law.com

April 18, 2008

Tonnevold Reefer 7 KS  
1 Odden  
4891 Grimstad  
Norway  
Tel.: +47 37 25 89 00

Via DHL

Re: Eastwind Maritime S.A. v. Tonnevold Reefer 7 KS  
S.D.N.Y. Index No. 08 CV 3292 (HB)  
Our ref.: 500115.019

## Notice of Additional Funds Restrained pursuant to Maritime Attachment

Dear Sirs:

As you know, we are New York attorneys who represent Eastwind Maritime S.A. in the above-referenced matter.

We provided you by letter dated April 14, 2008 with Notice of a Lawsuit that has been commenced by Eastwind Maritime S.A. against Tonnevold Reefer 7 KS in the U.S. District Court for the Southern District of New York. Additionally, we provided you Notice, in accordance with Fed. R. Civ. P. Supplemental Rule B(2), that property belonging to Tonnevold Reefer 7 KS is being restrained pursuant to Process of Maritime Attachment issued by the U.S. District Court for the Southern District of New York. The property, *i.e.* money, has been restrained, and will be held pursuant to the Court's Order, to secure the claim asserted by Eastwind Maritime S.A. against Tonnevold Reefer 7 KS regarding its breach of the charter party dated December 6, 2006 and its three addenda, between Eastwind Maritime S.A. and Tonnevold Reefer 7 KS for the ship the M/V THORGULL.

CHALOS, O'CONNOR & DUFFY LLP

Additionally, by letter dated April 17, 2008, we provided you with notice that additional funds had been restrained in this matter.

We now write to you so that you may,

**PLEASE TAKE FURTHER NOTICE** that the Process of Maritime Attachment has been executed in that the Process of Maritime Attachment was served, among others, on Citibank. This garnishee bank has confirmed that they are holding funds belonging to Tonnevold Reefer 7 KS in accordance with the Process of Maritime Attachment. Citibank restrained \$2,195.15 on April 18, 2008.

As such the \$2,195.15 has been restrained in this matter. This is in addition to the \$176,913.93 which we informed you of in our letter of April 14, 2008 and the \$8,525.00 which we informed you of in our letter of April 17, 2008.

The total amount that is presently being restrained, \$187,634.08, is insufficient to fully secure Eastwind Maritime S.A.'s claim of \$452,616.48. As such we are continuing to serve the Process of Maritime Attachment on Citibank and other banks in New York so as to restrain any further funds that are being electronically transferred to or from Tonnevold Reefer 7 KS or any of its aliases.

As set forth in Supplemental Rule E (4)(f), any person claiming an interest in such property is entitled to a prompt hearing at which the plaintiff shall be required to show why the attachment should not be vacated or other relief granted consistent with the rules. We are, however, of the firm view that there are no grounds for the attachment to be vacated.

Alternatively, whenever Process of Maritime Attachment and Garnishment is issued, the execution of such process shall be stayed, or the property released, on the giving of security, to be approved by the court or clerk, or by the stipulation of the parties, conditioned to answer the judgment of the court or any appellate court. The parties may stipulate the amount and nature of such security.

Under the circumstances, if you are interested in providing alternate security so as to release the attachment over its funds being held by the garnishee-bank and to prevent the attachment of additional funds, then I ask that you or your legal counsel contact the undersigned. If we fail to hear from you, we will eventually proceed to execute on such funds.

I thank you for your attention to this matter, and I look forward to hearing from you.

Very truly yours,

CHALOS, O'CONNOR & DUFFY, LLP



Owen F. Duffy

OFD:gem

# EXHIBIT 4

William J. Honan  
Christopher R. Nolan  
HOLLAND & KNIGHT LLP  
195 Broadway  
New York, NY 10007-3189  
(212) 513-3200

ATTORNEYS FOR DEFENDANT  
TONNEVOLD REEFER 7 KS, A/K/A,  
TONNEVOLD REEFER 4 KS, A/K/A, AND  
O.T TONNEVOLD AS

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EASTWIND MARITIME, S.A.

Plaintiff,

-against-

TONNEVOLD REEFER 7 KS,  
a/k/a TONNEVOLD REEFER 2 KS,  
a/k/a TONNEVOLD REEFER 4 KS,  
a/k/a O.T. TONNEVOLD AS,  
a/k/a TONNEVOLD OT,

Defendant.

08 Civ. 03292 (HB)

**VERIFIED ANSWER  
AND COUNTER-CLAIM**

NOW COMES Defendant, Tonnevold Reefer 7 KS, A/K/A, Tonnevold Reefer 4 KS, A/K/A, O.T. Tonnevold AS, A/K/A, and Tonnevold OT (collectively "Tonnevold" or "Defendant"), by and through its attorneys, Holland & Knight LLP, answering the Complaint of Eastwind Maritime, S.A. ("Eastwind"), and respectfully alleging as follows:

1. Admits the allegations set forth in paragraph "1" of the Verified Complaint.

2. Admits Eastwind Maritime Inc. lists on its website an office at 444 Madison Avenue, New York, New York, 10022, but denies having knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations set forth in paragraph "2" of the Verified Complaint.

3. Admits the allegations set forth in paragraph "3" of the Verified Complaint.

4. Admits the allegations set forth in paragraph "4" of the Verified Complaint.

5. Admits Tonnevold is the registered owner of the *M/V Thorgull* ("*Thorgull*" or "Vessel"), and denies the remainder of the allegations set forth in paragraph "5" of the Verified Complaint.

6. Admits that Tonnevold Reefer 4 KS originally entered into a time charter for the *Thorgull* with ECo Shipping Ltd. ("ECo") on or about September 29, 2000, and denies the remainder of the allegations set forth in paragraph "6" of the Verified Complaint.

7. Admits that Tonnevold agreed to enter into a mitigating charter party with ECo and Eastwind on or about December 6, 2006 ("Mitigating Charter"), after ECo and Eastwind breached the December 20, 2005 charter between Tonnevold Reefer 7 KS, a successor corporation, and ECo ("Breaching Charter"), and denies the remainder of the allegations set forth in paragraph "7" of the Verified Complaint.

8. Admits that Tonnevold, ECo and Eastwind agreed to three addenda to the Mitigating Charter in connection with the Vessel, and denies the remainder of the allegations set forth in paragraph "8" of the Verified Complaint.

9. Admits that Tonnevold, ECo and Eastwind agreed to a third addendum to the Mitigating Charter on or about July 19, 2007, for the Vessel and that the Vessel carried cocoa



beans shipped from Panjang, Malaysia to Buenaventura, Columbia, and denies the remainder of the allegations set forth in paragraph "9" of the Verified Complaint.

10. Admits that the third addendum between Tonnevold, ECo and Eastwind is a maritime contract, but denies the remainder of the allegations set forth in paragraph "10" of the Verified Complaint.

11. Admits that with respect to the voyage from Penjang to Buenaventura, ECo and Eastwind made regular and timely hire payments to Tonnevold, and denies the remainder of the allegations set forth in paragraph "11" of the Verified Complaint.

12. Denies the allegations set forth in paragraph "12" of the Verified Complaint.

13. Admits that ECo and Eastwind have demanded Tonnevold pay \$297,748.04 in connection with the Vessel and that Tonnevold has not made payment to ECo and/or Eastwind in the amount claimed in paragraphs "12" and "14" of the Verified Complaint due to ECo and Eastwind's breach of the Breaching Charter, and denies the remainder of the allegations set forth in paragraph "13" of the Verified Complaint.

14. Denies the allegations set forth in paragraph "14" of the Verified Complaint.

15. Admits that the charter between Tonnevold, ECo and Eastwind provides, at clause 22, that any disputes arising out of the charter shall be governed by English law and shall be referred to arbitration in London, and denies the remainder of the allegations set forth in paragraph "15" of the Verified Complaint.

16. Paragraph "16" asserts legal conclusions to which no response is required.

17. Denies having knowledge or information sufficient to form a belief as to the truth or falsity of the allegations set forth in paragraph "17" of the Verified Complaint.

18. Denies the allegations set forth in paragraph "18" of the Verified Complaint.

19. Admit that at least one garnishee bank in this District has attached monies in connection with this action, and that an arbitration will decide the merits of the dispute between the parties, and denies the remainder of the allegations set forth in paragraph "19" of the Verified Complaint.

20. Admit that at least one garnishee bank in this District has attached monies in connection with this action, and denies the remainder of the allegations set forth in paragraph "20" of the Verified Complaint.

21. Admits Tonnevold cannot be found within the Southern District of New York within the meaning of Rule B of the Supplemental Rules for Admiralty or Maritime Claims and Forfeiture Actions of the Federal Rules of Civil Procedure, and asserts the statement in paragraph "21" of the Verified Complaint concerning the affidavit of Owen F. Duffy is a legal conclusion to which no response is required.

22. Paragraph "22" asserts legal conclusions to which no response is required.

**FURTHER ANSWERING THE COMPLAINT, AND AS  
FOR SEPARATE, PARTIAL AND/OR COMPLETE DEFENSES  
THERE TO, DEFENDANT TONNEVOLD STATES:**

23. The Verified Complaint fails to state a cause of action upon which relief may be granted.

24. Tonnevold is not liable to ECo and Eastwind on the causes of action alleged in the Verified Complaint.

25. This Court lacks *quasi in rem* jurisdiction over Defendant.

26. ECo and Eastwind has improperly and/or insufficiently served process on Tonnevold.

27. Eco and Eastwind's claims are barred by the equitable doctrine of unclean hands.

28. Any damages sustained by ECo and Eastwind, as alleged in the Verified Complaint, were proximately caused by the negligent acts of third persons whom Tonnevold has no direction or control.

29. ECo and Eastwind's claims are overstated in the level of security sought from and provided by Tonnevold and should be reduced to a reasonable sum.

30. Tonnevold pleads by way of defense and/or limitation every provision in the Breaching Charter, Mitigating Charter, and the addendums to the Mitigating Charter.

31. Eco and Eastwind's claims are subject to arbitration in London, England and English law pursuant to the Breaching Charter, the Mitigating Charter, and the addendums to the Mitigating Charter, and Tonnevold has no liability to ECo and Eastwind as a matter of law.

32. This Answer and Counter-claim is made without waiver of any of the jurisdictional defenses or rights to arbitrate that may exist between Tonnevold, ECo, and Eastwind.

**TONNEVOLD'S COUNTER-CLAIM**  
**(Breach of a Maritime Contract)**

As for its Counter-claim against Eastwind and ECo, Tonnevold alleges as follows:

33. Admiralty and maritime jurisdiction lies pursuant to 28 U.S.C. §1333(1) for Tonnevold's counter-claim, as hereinafter more fully appears and is a maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.

34. At all material times herein, Tonnevold is a foreign business entity organized and existing under the laws of Norway, and maintains a place of business in Grimstad, Norway.

35. Upon information and belief, at all times material herein, Eastwind is and was a business entity organized and existing under the laws of a foreign country, and claiming an office in the United States at 444 Madison Avenue, New York, New York 10022.

36. Upon information and belief, at all times material herein, ECo, alter-ego of Eastwind, is and was a business entity organized and existing under the laws of a foreign country, maintaining a place of business at 80 Broad Street, Monrovia, Liberia.

#### The Charter

37. On or about September 29, 2000, Tonnevold Reefer 4 KS entered into a time charter of the *Thorgull* with ECo for a period of about twelve months, which charter was extended by the agreement of the parties until December 20, 2005. On or about September 29, 2000, Tonnevold Reefer 4 KS entered into a pool agreement with ECo to include the *Thorgull*.

38. On or about December 20, 2005, a successor to Tonnevold Reefer 4 KS, Tonnevold Reefer 7 KS, entered into a charter with ECo for charter of the *Thorgull* for a period of about twelve months (the "Charter"). At the same time, Tonnevold Reefer 7 KS and ECo entered into a new pooling agreement with respect to the Vessel, named "ECo 2002 Pool Agreement" ("Pooling Agreement 02"). Both the Charter and the Pooling Agreement 02 were executed by Mr. Charles T. ("Toby") Moors, Vice President of ECo Shipping.

39. Pursuant to the Charter and while in the employ of ECo, the *Thorgull* performed a voyage from Los Palmas, Canary Islands to Tarifa, Spain from August 7 – September 18, 2006. During the voyage, the *Thorgull*, under the control of ECo and Eastwind, received for on-carriage recently-caught redfish from at least seven fishing vessels at sea.

40. All of the vessels from which the *Thorgull* received transshipments had been blacklisted by North East Atlantic Fisheries Commission ("NEAFC") and Northwest Atlantic Fisheries Organization ("NAFO") for activity that had contravened the NEAFC and NAFO rules and regulations.

41. In receiving redfish for on-carriage for the blacklisted vessels, ECo violated the NEAFC regulations, specifically Article 44 of the NEAFC Scheme of Control and Enforcement ("NEAFC Enforcement"), which prohibited such on-carriage of certain protected fish species, such as redfish.

42. The NEAFC is a Regional Fisheries Management Organization ("RFMO") that exists to conserve and manage the fishery resources of the northeast region of the Atlantic Ocean. The NAFO is another RFMO that exists to protect the fishery resources in a contiguous area, the northwest Atlantic Ocean.

43. This violation of the NEAFC rules and regulations is illegal activity in breach of Charter Clause 15, which requires that ECo and Eastwind employ the Vessel in "lawful trades."

44. As a result of the breach, NEAFC placed the *Thorgull* on the blacklist on November 17, 2006 and NAFO placed the "Thorgull" in its blacklist on February 23, 2007.

45. Through the diligent efforts of Tonnevold, the *Thorgull* was removed from the NEAFC blacklist on November 16, 2007, approximately one year after it was placed on the list, and from the NAFO blacklist thereafter.

46. As a result of the blacklisting of the Vessel, Tonnevold was unable to charter the vessel at market rate. In order to mitigate the damages caused by ECo's breach of the Charter, its alter-ego Eastwind agreed to charter the *Thorgull* while the Vessel was blacklisted.

47. On December 6, 2006, ECo, through its alter-ego Eastwind, and Tonnevold entered into a charter for a period of "about 60 days" as part of ECo and Eastwind's agreement to employ the *Thorgull* during the period it was blacklisted, the Mitigating Charter.

48. There were three single-page addenda to the Mitigating Charter; Addendum Number 1 is dated February 13, 2007, Addendum Number 2 is dated April 19, 2007, and Addendum Number 3 is dated July 19, 2007. All three addenda incorporate by reference the terms of the Mitigating Charter except revising *inter alia*, delivery, cargo, and hire information for the Vessel and identify Eastwind (acting on behalf of ECo), as Charterers, and Tonnevold, as Owners.

**ECo and Eastwind are Alter-egos**

49. ECo is the alter-ego of Eastwind because it dominates and disregards ECo's corporate form to the extent that Eastwind is actually carrying on ECo's business and operations as if the same were its own, or vice versa.

50. In early 2006, Mr. Moors, acting on behalf of the interests of ECo and Eastwind, indicated to Tonnevold that the Pooling Agreement 02 would end because there were too few ships remaining in the pool and running the pool in New York resulted in high administrative accounting costs.

51. Mr. Moors affirmed to Tonnevold that the *Thorgull*, while leaving the Pooling Agreement 02, would be chartered by Eastwind, on behalf of ECo, in an effort to keep the Vessel working even during the blacklist period. This indicates there existed such unity of ownership and interest between ECo and Eastwind that no separation exists such that the corporate form had been disregarded.

52. On or about July 12, 2007, Paul Capkanis, of Eastwind Transport, Ltd., on behalf of ECo, reaffirmed Eastwind's continued intent to employ the *Thorgull* in a third addendum to the Mitigating Charter, continuing thereafter until the Vessel was de-listed by the NEAFC.

53. Tonnevold's communications with ECo and Eastwind concerning the original charter in 2000, the breached Charter, the Mitigating Charter and addenda to that Charter have all involved the same personnel, interchangeably utilizing the same contact information for both entities, including identical mailing addresses, email addresses with the "Eastwind Group," facsimile numbers and telephone numbers, such that there is no meaningful difference between the two entities.

54. On the Eastwind website, <http://www.eastwindgroup.com>, an Eastwind entity has a New York address of 444 Madison Avenue, Suite 200, New York, New York. Plaintiff Eastwind interchanges itself and other members of the "Eastwind Group" in its Verified Complaint, noting Eastwind operates "from the offices of the "Eastwind Group," when in fact the website describes Eastwind Maritime Inc. as the chief management office. No less than eight "Eastwind" entities are listed on the Eastwind website, none of them being Eastwind Maritime S.A.

55. The New York State Department of State website lists ECo's address as 444 Madison Avenue, Suite 200, New York, the same address as Eastwind as noted on its website.

56. Dun & Bradstreet and the New York State Department of State website list John Kousi as the president and chief executive officer of both Eastwind and ECo.

57. Both the Charter and the Pooling Agreement 02 were executed by Mr. Moors as "Vice-President" on behalf of ECo shipping. Mr. Moors has also been identified as Vice-President of Eastwind on Internet websites.

58. The alter-ego relationship between ECo and the Eastwind Group is confirmed in notice provision for Pooling Agreement 02, which states:

any notices under this agreement may be delivered by mail, electronic mail, telex, or facsimile:  
ECo or the Pool, to  
c/o Eastwind Transport Ltd.  
444 Madison Avenue  
Suite 200  
New York, NY 10022  
Facsimile: (212) 838-8439  
Telex: 420111 EWINDNY  
Email: eastwind@eastwindgroup.com

The address designated for ECo and Eastwind Transport Ltd. is the same address and facsimile listed for Eastwind.

59. Based on the foregoing circumstances, ECo used Eastwind to conduct business on its behalf in an effort to mitigate the losses suffered by Tonnevold as a result of ECo's breach of the Charter and despite ECo having provided no consideration to Eastwind. Alternatively, ECo and Eastwind have commingled funds and/or otherwise have failed to observe corporate formalities when entering into charter agreements.

60. It is not a general practice in the maritime community, nor anywhere else, for independent companies to allow other companies to enter into charter arrangements on its behalf.

61. Disregard of corporate formalities when entering into binding agreements by one independent company on behalf of another independent company are suggestive of a relationship that is not "arms length" and support the alter-ego claim.



**Tonnevold Damages**

62. As a result of the blacklisting and the ECo and Eastwind breach of the Charter, Tonnevold has suffered damages in the amount of \$836,601.22, as set forth below:

a. Tonnevold made diligent efforts to have the *Thorgull* removed from the NEAFC blacklist. The efforts to remove the *Thorgull* from the NEAFC blacklist cost Tonnevold a total of \$20,500 as a result of meetings and travel expenses on the part of Tonnevold employees when negotiating with NEAFC.

b. Tonnevold has been unable to charter the *Thorgull* on the market and, instead, has been chartering it to Eastwind on a series of voyages at below market rate. The loss of revenue while under the charter to Eastwind from January 1, 2007 – September 11, 2007 was \$227,940.01.

c. Despite Tonnevold's diligent efforts to charter the *Thorgull*, the vessel was unemployed during September 12 - November 28, 2007, while the Vessel remained blacklisted. Tonnevold's damages while the Vessel was unemployed was \$424,129.21.

d. As a result of the blacklisting, Tonnevold also suffered damages due to additional expenses incurred in operating the Vessel amounting to a total of \$164,032.00, including \$147,157.00 for the incremental expenses that Tonnevold incurred as the result of the vessel not trading in its usual trade pattern. The incremental expenses are for crew travel, consumables, and lubricants. The remaining \$16,875 in losses is for the transportation of spare parts from Halifax to Alexandria, Egypt, due to the *Thorgull* not being permitted to enter the port at Halifax because it had been placed on the NEAFC blacklist.

63. Tonnevold has filed for arbitration in accordance with the arbitration provisions contained in all of the Vessel charters described herein, and its Answer and counter-claim are not and cannot be considered a waiver of the parties' agreement to arbitrate.

**PRAYER FOR RELIEF**

WHEREFORE, the Defendant Tonnevold respectfully requests:

1. That this Court dismisses the Verified Complaint against Tonnevold with prejudice;
2. That this Court cites ECo and Eastwind to answer under oath all allegations in this counter-claim;
3. That pursuant to the Supplemental Rules for Certain Admiralty or Maritime Claims and Asset Forfeiture Actions, this Court issue an Order directing Eco and/or Eastwind to post counter-security in the sum of \$836,601.22, failing which, (a) ECo and Eastwind be enjoined from prosecuting its claims against Tonnevold here, in the London arbitration, or any other venue; and/or (b) Eco and Eastwind's attachment of any and all of Tonnevold's property attached in this action pursuant to Rule B of the Supplemental Rules for Certain Admiralty or Maritime Claims and Asset Forfeiture Actions immediately be vacated;
4. That upon the posting of counter-security in the sum of \$836,601.22, that this matter be placed on the suspense calendar pending arbitration in London, and that this Court retain jurisdiction over this matter through the entry of any judgment or award associated with any of the claims currently pending, or which may be initiated in the future, including any appeals thereof;

5. That this Court recognize and confirm any arbitration award(s) or judgment(s) rendered on the counter-claim set forth herein as a Judgment of this Court; and
6. That this Court grant Tonnevold such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
April 18, 2008

HOLLAND & KNIGHT LLP

By: 

William J. Honan  
Christopher R. Nolan  
HOLLAND & KNIGHT LLP  
195 Broadway  
New York, New York 10007  
(212) 513-3200

*Attorneys for Defendant*  
Tonnevold

TO: Chalos, O'Conner & Duffy, LLP  
George E. Murphy  
366 Main Street  
Port Washington, NY 11050  
Tel: 516-767-3600  
Fax: 516-767-3605  
*Attorneys for Plaintiff*

**VERIFICATION**

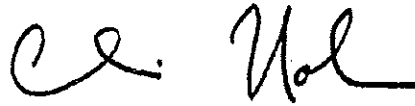
STATE OF NEW YORK )

:ss.:

COUNTY OF NEW YORK )

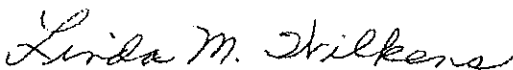
CHRISTOPHER R. NOLAN, being duly sworn, deposes and says:

I am associated with the firm of Holland & Knight LLP, counsel for Tonnevold, defendant in the foregoing action. I have read the foregoing Verified Answer and counter-claim and know the contents thereof, and the same are true and correct to the best of my knowledge. I have reviewed documentation provided to me by Tonnevold and corresponded with Tonnevold's representatives regarding this matter. I am authorized by Tonnevold to make this verification, and the reason for my making it as opposed to an officer or director of Tonnevold is that there are none within the jurisdiction of this Honorable Court.



Christopher R. Nolan

Sworn to before me this  
18<sup>th</sup> day of April, 2008



Notary Public

Linda M. Wilkens  
Notary Public, State of New York  
No. 01W19672435  
Qualified in Queens County  
Certificate filed in New York County  
Commission Expires September 30, 2010

# 5268798\_v1

# EXHIBIT 5

William J. Honan  
Christopher R. Nolan  
HOLLAND & KNIGHT LLP  
195 Broadway  
New York, NY 10007-3189  
(212) 513-3200

ATTORNEYS FOR DEFENDANT  
Tonnevold Reefer 7 KS,  
Tonnevold Reefer 4 KS, AND  
O.T. Tonnevold AS

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EASTWIND MARITIME, S.A.

Plaintiff,

-against-

Tonnevold Reefer 7 KS,  
a/k/a Tonnevold Reefer 2 KS,  
a/k/a Tonnevold Reefer 4 KS,  
a/k/a O.T. Tonnevold AS,  
a/k/a Tonnevold OT,

Defendant.

08 Civ. 03292 (HB)

**NOTICE OF MOTION**

**PLEASE TAKE NOTICE THAT** upon the declaration of Jan Sigvart Walle dated April 18, 2008, and the accompanying Memorandum of Law in Support, and all pleadings heretofore had in this matter, Defendant Tonnevold Reefer 7 KS, Tonnevold Reefer 4 KS, and O.T. Tonnevold AS (collectively "Tonnevold"), will move this Court, before the Honorable Harold Baer, United States District Judge, at 500 Pearl Street, Courtroom 23B, New York, New York, on a date to be set by this Honorable Court, for an order pursuant to Rule E(7)(a) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, directing

(a) Plaintiff Eastwind Maritime S.A. to give security to Tonnevold for the damages demanded in Tonnevold's counter-claim within 10 days from the issuance of the order; and (b) directing such other and further relief as the Court may deem proper.

Dated: New York, New York  
April 18, 2008

HOLLAND & KNIGHT LLP

By: 

William J. Honan  
Christopher R. Nolan  
HOLLAND & KNIGHT LLP  
195 Broadway  
New York, New York 10007  
(212) 513-3200

*Attorneys for Defendant  
Defendant Tonnevold Reefer 7 KS,  
Tonnevold Reefer 4 KS, and  
O.T. Tonnevold AS*

TO: Chalos, O'Conner & Duffy, LLP  
George E. Murphy  
366 Main Street  
Port Washington, NY 11050  
Tel: 516-767-3600  
Fax: 516-767-3605  
*Attorneys for Plaintiff*

# EXHIBIT 6



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
EASTWIND MARITIME S.A.,

Plaintiff,

-against-

08 CV 3292 (HB)

TONNEVOLD REEFER 7 KS,  
a/k/a TONNEVOLD REEFER 2 KS,  
a/k/a TONNEVOLD REEFER 4 KS,  
a/k/a O.T. TONNEVOLD AS,  
a/k/a TONNEVOLD OT,

**DECLARATION OF  
JOHN G. POLES**

Defendant.

-----X

I, John G. Poles, declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am a partner at the firm of Poles, Tublin, Stratakis, Gonzalez & Weichert, LLP, representing non-party ECo Shipping Ltd. (hereinafter "ECo") in an arbitration between ECo and a defendant named in the above-captioned case, and I make this declaration in opposition to the request for counter-security requested by the defendants herein from ECo in the amount of \$836,601.22.

2. Our opposition is founded upon the fact that the counter-claim being alleged by defendants herein does not arise from the transaction or the occurrence that is the subject of the above named action. Consequently, Supplemental Rule E(7)(a) is not applicable. The captioned action in which application for Rule B attachment in the amount of \$452,616.48 was made is being prosecuted by a different law firm, i.e. Chalos, O'Connor & Duffy, LLP.

3. It should be noted that ECo is not a named party to the above-captioned action and I have been informed by ECo that it has not been served in the above-captioned action.

4. The above-captioned action was brought by a company that is distinct but related to ECo, namely Eastwind Maritime S.A. These companies are not alter egos of each other and maintain separate corporate existence.

5. I am informed that the above-captioned action is grounded upon claims for hire, expenses and overpayment of hire. On the other hand, the alleged claim against ECo made by Tonnevold in a New York arbitration is an allegation that ECo illegally loaded "red fish", based upon a different charter party and pooling agreement.

6. The charter which Tonnevold Reefer 7 KS (hereinafter "Tonnevold") has called for arbitration provides for New York arbitration. The charter which is the subject of the above-captioned action provides for London arbitration.

7. The different charter party which is presently being arbitrated in New York between ECo and Tonnevold is dated December 20, 2005 and is a direct continuance of a time charter dated September 29, 2000 for use in a pooling arrangement. A copy of the charter and pool agreement are annexed hereto as Exhibits A and B.

8. It is important to note that the different charter referred to in Paragraph 7 is presently being heard in arbitration in New York. The arbitrators have been duly appointed and the first hearing is set for June 11, 2008.

9. The background of this separate, distinct transaction and occurrence is as follows: Holland & Knight, representing the owners of the m/v THORGULL demanded arbitration on behalf of their client, Tonnevold against ECo,

represented by Poles, Tublin, Stratakis, Gonzalez & Weichert. The m/v THORGULL was specifically chartered to ECo on December 20, 2005 as a direct continuance of a time charter dated September 29, 2000 **for use in a pooling arrangement** which was a direct continuance of "ECo Pool Vessel Contribution Agreement 1999" (the "ECo 99 Pool Agreement"). As stated above, the time charter from owner to ECo provides for arbitration in New York pursuant to New York law before two (2) arbitrators; if the two (2) arbitrators did not agree, an umpire would be appointed by the two (2) arbitrators in order to resolve the deadlock. The ECo Pool Vessel Contribution Agreement (ECo 99 Pool Agreement) provided that, in case of conflict between the provisions of the ECo Pool Vessel Contribution Agreement and the provisions of the ECo Time 99 Charter party, the dispute would be resolved by arbitration in New York by a panel of three (3) arbitrators. For practicality, the attorneys for the respective parties, i.e., ECo and Tonnevold, agreed that any conflicts between the provisions of ECo 99 Pool Agreement and the provisions of ECo Time 99 Charter Party, shall be submitted to the same three (3) arbitrators in New York and the panel of arbitrators would resolve all disputes arising out of the Time Charter dated December 20, 2005 and the ECo 2002 Pool Agreement. Hence, the duly constituted panel of three (3) arbitrators in New York have been appointed to resolve any disputes dealing with the Charter Party of December 2005 and the Pooling Agreement. **See arbitration clause 61 re charter party and arbitration clause 17 re pooling agreement.**

10. There is no relationship whatsoever between the claim being made which serves as the foundation of the action herein and the alleged claim being arbitrated before the duly constituted New York panel. The Charter Party dated December 20, 2005

and the Pooling Agreement is a completely separate type of transaction from the action brought herein based upon a different charter dated December 6, 2006:

A. In the New York Arbitration proceeding (December 20, 2005 charter and pooling agreement) the vessel was specifically chartered to be placed in a pooling arrangement with other vessels, whereupon the vessel would be operated out of the pool. In effect, the vessel became part of a cooperative venture, the operating rights or liabilities would be determined by the pool agreements and the charter party dated December 20, 2005.

B. In the different direct charter between owner and charterer dated December 6, 2006, the vessel was not to be used as part of a pooling agreement and the arbitration clause provides for London arbitration pursuant to English law.

C. I am informed that the above-captioned matter is, in fact, based on a Third Addendum to the Charter Party dated December 6, 2006, that was entered into between Eastwind Maritime S.A. and the Tonnevold entities. ECo was not a party to the addendums to the Charter Party dated December 6, 2006.

Hence, the character and type of transactions (the subject of the action herein) are completely different and each provides for dispute resolution pursuant to arbitration in different places under different laws.

11. The claim which is the subject of the above-captioned action, deals with matters of hire, expenses and overpayment of hire and is to be arbitrated in London under English law; however, the alleged claim which the owner of the m/v THORGULL is arbitrating in New York deals with the allegation of loading illegal red fish cargo.

12. The arbitration clause which serves as a basis for the action herein provides for London arbitration under terms of English law.

13. The arbitration clauses which the owner seeks to resolve the illegal red fish loading provides for arbitration in New York.

In summary, the charter contracts are different. The arbitration clauses contained therein are different in that they provide for resolution of disputes in different jurisdictions, venues and different laws. The charter being arbitrated in New York is controlled by a different charter party and a pooling agreement. The pooling agreement had expired prior to the charter which is the basis of the action herein. Consequently, the rights and liabilities of the parties are controlled by different contractual foundations.

The alleged claim which the owner of the m/v THORGULL seeks to employ for purposes of counter-security does not arise from the same transaction or occurrence which is the subject of the above-captioned action. Hence, the request for counter security is not subject to Supplemental Rule E(7)(a) and should be dismissed.

It is respectfully submitted that the claim for counter-security by the owner is merely a transparent attempt to lump two completely different transactions and occurrences (arising from different legal foundations) in order to avoid the fact that ECo is present in this jurisdiction and is therefore immune from prejudgment attachment actions in New York made pursuant to Rule B of the Supplemental Rules of the Federal Rules of Civil Procedure.

Dated: New York, New York  
May 28, 2008

By: \_\_\_\_\_

John G. Poles

# **EXHIBIT “A”**



ORIGINAL

## ECOTIME 99 – PART I

Issued in January 1999

1. Date 29 September, 2000	4. Charterers ECo Shipping Ltd. 80 Broad Street Monrovia, Liberia
2. Vessel M/V Thorgull	7. Vessel's present position Far East.
3. Owners Tonnevold Reefer 4 KS C/- O.T. Tonnevold Grimstad, Norway	8. Place or range of delivery See ECo 99 Pool Agreement, 29 September, 2000 Clause 4
5. Charter period Twelve (12) months Plus / minus 30 days in charterers option	9. Time of delivery DOP Shanghai after Drydock 15-31, 2000.
6. Trading limits Within IWL excluding N. Korea, Finland, Laos, Cambodia.	10. Cancelling date N/A
	11. Place or range of redelivery Worldwide see ECo 99 Pool Agreement 29 September, 2000 clause 6
12. Delivery notices N/A	13. Redelivery notices See ECo 99 Pool Agreement clause 3
14. Quantity of fuel on delivery A. IFO max: min: B. MDO max: min:	16. Fuel price (if fixed price agreed, see clause 9) A. Delivery IFO : As per ECo 99 Pool Agreement 29 September, 2000. B. Delivery MDO : C. Redelivery IFO : D. Redelivery MDO :
15. Quantity of fuel on redelivery (see Clause 9) A. IFO max: min: B. MDO max: min:	

17. Vessel's A. Flag: Liberia		B. Year/Month of building: 1983 / 02		C. Call sign: E L T U 4					
D. Official reg. number: 10601		E. Telex system number Inmarsat A - 1260746 Inmarsat C - 463677710		F. Trade factor: REEFER					
18. Class A. Hull: NK									
B. Machinery: NK									
C. Ice: N/A									
D. Certificate for temp. between: -25 / + 32 Cel		E. USDA-equipment Yes X No		F. USDA-certificate Yes No X					
G. Live Car Certificate Yes No X									
19. Vessel's dimensions									
Length over all 145.58		metres		Draft on full DW summer freeboard: 6765					
Beam moulded 17.80		metres		Higher/closed shelter N/A metres					
Draft, ballast 4.45		metres		Lower/open shelter N/A metres					
				Draft, banana laden 5.84 metres					
20. Tonnage									
A. Gross: 6127 /		B. Panama: 6784 GRT / 5184 NRT		C. Deadweight all told in Mtons on summer freeboard: 6324.5					
D. Net: 2699 /		E. Suez 6329.47 GRT / 5070.78 NRT							
21. Quantity of stores and freshwater not exceeding Stores 320 MT			22. Operational bunker capacity in cbm 85 % (CBM)						
			IFO 380: 902.6 / IFO 180: 216.4 MDO: 119.9						
23. Main engines, speed and consumption									
Bunker viscosity: IFO 180			Makers: MITSUI B&W Type: 8L45G FCA BHP/MCR: 7890 PS At RPM: 175 rpm						
Ordinary nozzles	Max continuous speed			Service speed			Min continuous speed		
	Knots	RPM	Cons. MTons	Knots	RPM	Cons. MTons	Knots	RPM	Cons. MTons
Full DWT	17.5			17.0			15.5		
Full banana cargo	17.5			17.0			15.5		
Ballast	17.5			17.0			15.5		
Low speed nozzles	Max continuous speed			Service speed			Min continuous speed		
	Knots	RPM	Cons. MTons	Knots	RPM	Cons. MTons	Knots	RPM	Cons. MTons
Full DWT									
Full banana cargo									
Ballast									
24. Auxiliary engines Yanmar Diesel									
Bunker viscosity/blend in percent: 180 CST									
Consumption at sea					Consumption in port				
Min	1.6	and max	4.1	MTons per 24 hours	Min	1.6	and max	3.3	MTons per 24 hours



A. Compartments furnished with elevator hatches:  
N/A

B. Number of sideports each side:

Port: 4 Starboard:  
Deck: A Deck:  
Clear opening: 2.05 x 2.05 meters

C. Type of tween deck and weather deck hatch covers:  
Weather deck – End rolling type  
Tween deck - Folding type

D. Type of gratings: Wooden Daiken  
- thickness/material: 42 mm/Apition plywood  
- permissible weight of fork lift + cargo: 5.0 Mtons

E. All gratings flush?      Yes    X    No  
- if no, describe:

F. Container capacity:		
on weather deck:	N/A	TEU
in holds:	N/A	TEU
Lashing material for		containers N/A

05/28/2008 Page 10 of 28  
 5. Reel container capacity with plug in sets:  
 on weather deck: N/A TEU

H. Size of hatches (weather deck, hatch opening L x W)

Hatch No 1	7.03	x	5.32	metres
Hatch No. 2	7.03	x	5.32	metres
Hatch No 3	7.03	x	5.32	metres
Hatch No 4	7.03	x	5.31	metres
Hatch No.5.	-	x	-	metres

1. Engine room between holds No. 4 and STERN

J. Permanent side shorings  
Yes X No

K. Number of separately insulated compartments:  
8

L. Number of compartments with separate cooling units:  
8

CBFT, minimum deck height (in meters) and deck area (in sqm)

	Hatch No 5	Hatch No 4	Hatch No 3	Hatch No 2	Hatch No 1
H	1716	1716	1716	1850	
FC	1.30	1.30	1.30	1.34	
A	20,738	28,813	28,135	30,201	
B	2.18	2.21	2.21	2.25	
C	28,188	28,464	26,571	16,372	
D	2.19	2.17	2.17	2.17	
E	25,607	27,676	24,229	12,127	
F	2.21	2.21	2.17	2.21	
G					
T	85,249	86,669	80,651	60,550	
	959.0	1003.10	914.7	547.7	

H = Hatch coaming      FC = Forecastle      T = Total

H = Hatch coaming

FC = Forecastle

$T = \text{Total}$

Note: HORIZONTAL INSULATION to be marked with DOUBLE LINE

CBFT BALE

min deck height	Deck area
1.0	1.0
1.2	1.2
1.4	1.4
1.6	1.6
1.8	1.8
2.0	2.0
2.2	2.2
2.4	2.4
2.6	2.6
2.8	2.8
3.0	3.0
3.2	3.2
3.4	3.4
3.6	3.6
3.8	3.8
4.0	4.0
4.2	4.2
4.4	4.4
4.6	4.6
4.8	4.8
5.0	5.0
5.2	5.2
5.4	5.4
5.6	5.6
5.8	5.8
6.0	6.0
6.2	6.2
6.4	6.4
6.6	6.6
6.8	6.8
7.0	7.0
7.2	7.2
7.4	7.4
7.6	7.6
7.8	7.8
8.0	8.0
8.2	8.2
8.4	8.4
8.6	8.6
8.8	8.8
9.0	9.0
9.2	9.2
9.4	9.4
9.6	9.6
9.8	9.8
10.0	10.0

GRAND TOTAL

CBFT	313,122
Deck area	3,424.5

## 26. Cargo gear

- A. Number of cranes: N/A  
SWL in MTons:
- B. Number of derricks: 8  
SWL in MTons: 5.0  
Union purchase capacity in MTons: 3.5
- C. Other type of gear: N/A  
Lifting capacity:

## 27. Refrigeration and ventilation

- A. Vessel has Tobson or Ductless ventilation system  
DUCTLESS
- B. Air is circulated upwards or downwards:  
UPWARDS
- C. Hatch coamings are ventilated  
Yes ☒ X No ☐
- D. Number of air circulations per hour: 90 / 45
- E. Number of fresh air renewals per hour: 4 / 1.5
- F. Ozone generators  
Yes ☐ X No ☐
- G. Refrigeration capacity (0°C evaporation  
temperature and 30°C cooling water temperature)  
kcal/hr: 330,000 Kcal/hr

## 28. Passengers NONE

Number of berths: Price per day:

## 29. Meals, telegrams, entertainment etc (state, if agreed, lump sum per month)

USD 800

## 30. Hire payment in US dollars (state, mode and place of payment; also beneficiary and bank account no.) See ECo99 Pool Agreement 29 September, 2000.

Finansbanken ASA, P.O. Box 817 Sentrum, N - 0104 Oslo, Norway

Acct No.: 9680 55 16361 for account of Tonnevold Reefer 4 KS

## 31. Remarks:

In the event of a default by ECo in the performance of its obligations under this Charter-Party that shall not have been cured within a reasonable period, the owners may unilaterally terminate this Charter-Party and withdraw the vessel from ECo's service without economic penalty arising from the withdrawal.

Owners to pay a commission of 1.25 % to Orion Shipping AS, Oslo on net payments from the Pool

It is mutually agreed that this contract shall be performed subject to the terms and conditions contained in this Charter, which shall include Part I as well as Part II.

AS Agent for Tonnevold Reefer 4 KS

Signature for the Owners

Signature for ECo Shipping Ltd.

# ECoTIME 99 – Part II

Issued in January 1999

ORIGINAL

<b>DATE :</b>	<b>29 SEPTEMBER, 2000</b>
<b>VESSEL:</b>	<b>MV THORGULL</b>
<b>OWNERS:</b>	<b>O.T. TONNEVOLD GRIMSTAD NORWAY</b>

**ECo**  
**SHIPPING**

It is agreed between the party mentioned above and in Box 3 as Owners ("the Owners", which shall include Disponent Owners) of the Vessel named in Box 2 ("the Vessel") now in position as stated in Box 7, and ECo Shipping Ltd. ("ECo") as Charterers on the terms and conditions set out below.	1 2 3 4	The Vessel shall keep a sufficient stock of spare gratings and material on board. If the gratings are not permanently fixed the grating pieces are to be marked to enable identification when they are replaced.	85 86 87
<b>A. PERIOD DELIVERY AND REDELIVERY</b>	5	If the Owners should fail to comply with the requirements of this Clause, then ECo shall be entitled to recover damages for any loss which they may suffer as a result thereof, and to put the Vessel off-hire for any period lost by reason of such failure.	88 89 90 91
<b>1. Period and place of delivery</b>	6	<b>13. Drydocking</b>	92
The Owners agree to let and ECo agree to hire the Vessel for the period stated in Box 5 ("the Charter period") from the time the vessel is delivered and placed at the disposal of ECo at the place or range stated in Box 8.	7 8 9	The Owners to keep ECo closely informed about their long-range drydocking programme. Actual time and place for drydocking and other planned repairs and maintenance to be mutually agreed save that ECo shall be under no obligation to agree to any drydocking or repairs taking place between 1 <sup>st</sup> February and 30 <sup>th</sup> June in any calendar year unless specifically required by the Classification Society or as a result of underwater damage requiring immediate drydocking. All extra costs, including but not limited to extra costs for fuel and bunkering, in connection with drydocking or repairing to be borne by the Owners. For the purposes of this Clause, dry-docking and other planned repairs and maintenance shall include the cleaning of the Vessel's bottom to as to enable her to comply with the provisions of Clause 10 hereof.	93 94 95 96 97 98 99 100 101 101 A 101 B
<b>1. The Vessel's condition on delivery</b>	10	<b>14. Compliance and manning</b>	102
It is a condition of the Charter that, on delivery, the Vessel shall be in accordance with the terms and conditions of the Charter, be ready to receive cargo, seaworthy and in every way fitted for service, with refrigerated holds cleaned and swept and fully prepared for the proper carriage of cargoes within the limits of the Charter, with gratings complete throughout and with a Master and a full and proper complement of Officers and Crew. Acceptance of delivery of the Vessel shall not constitute a waiver of ECo's rights under the Charter.	11 12 13 14 15 16 17	The Owners are to ensure throughout the currency of this Charter: (a) that the Vessel is provided with such technical equipment, navigational aids and certificates relating to safety, pollution, equipment and freedom to trade as will enable her to trade without hindrance in accordance with the terms of this Charter and (b) that the terms and conditions on which the Master, Officers and Crew are engaged are in compliance with the minimum current requirements of the ITP collective agreement for worldwide trading or such equivalent as may be necessary for such trading henceforward, and that any necessary certificate to that effect shall be provided on board the Vessel, and, in the event of any breach of this Clause, or any delay or hindrance to the Vessel resulting therefrom, ECo shall be entitled to recover damages for and be indemnified against any such breach and to put the Vessel off-hire for any period of time lost by reason thereof.	103 104 105 106 107 108 109 110 111 112 113 114 115 116
<b>3. Time for delivery</b>	18	<b>15. Trade</b>	117
The Vessel to be delivered at any time, day or night, weekdays or holidays, not before the date stated in Box 9. The Owners to give ECo not less than the period of notice stated in Box 12 of the date on which the Vessel is expected to be ready for delivery. The Owners to keep ECo closely advised of possible changes in the Vessel's position and expected date of delivery.	19 20 21 22 23	The Vessel to be employed in lawful trades, within the limits stated in Box 6, between good and safe ports or places where she can lie always afloat or safely aground where it is customary for Vessels of similar size and draft to lie safely aground. Trading to sensitive areas always to be subject to approval of Owners which not to be unreasonably withheld.	118 119 120 121 122
<b>4. Cancelling</b>	24	<b>16. Excluded ports</b>	123
Should the Vessel not be delivered by the date and time indicated in Box 10, ECo to have the option of cancelling. If the Vessel cannot be delivered by the date and the time indicated in Box 9, ECo, if required by Owners, to declare within 7 days after receiving notice thereof whether they cancel or will take delivery of the Vessel.	25 26 27 28 29	The Vessel not to be ordered to nor bound to enter: (a) any place where fever or epidemics are prevalent or to which the Master, Officers and Crew by law are not bound to follow the Vessel; or (b) any icebound place or any place where lights, lightships, marks and buoys are or are likely to be withdrawn by reason of ice on the Vessel's arrival or where there is risk that ordinarily the Vessel will not be able on account of ice to reach the place or to get out after having completed loading or discharging. The Vessel not to be obliged to force ice nor to follow ice-breaker. If on account of ice the Master considers it dangerous to remain at the loading or discharging place for fear of the Vessel being frozen in and/or damaged, he has the liberty to sail to a convenient open place and await ECo's fresh instructions. Detention through any of above causes to be treated as a voyage cost.	124 125 126 127 128 129 130 131 132 133 134 135
<b>5. Redelivery</b>	30	<b>17. Cargo</b>	136
The Vessel to be redelivered at any time, day or night, weekdays or holidays, on the expiration of the Charter at the place or range stated in Box 11. ECo to give the Owners notice of redelivery as stated in Box 13. ECo to keep the Owners closely advised of possible changes in the Vessel's position and expected date of redelivery.	31 32 33 34 35	The Vessel to be employed for carriage of cooled and frozen cargo as well as other cargo not likely to be injurious to the Vessel. Dangerous goods to be carried in accordance with the IMDG-code at ECo's option, and any additional premium in respect thereof to be for ECo's account.	137 138 139 140
<b>6. Late redelivery</b>	36	<b>18. Transshipment</b>	141
Should the Vessel be ordered on a voyage by which the Charter period is exceeded, ECo to have the use of the Vessel to enable them to complete the voyage provided it could reasonably have been calculated at the date the orders were given to the Vessel that the voyage would allow redelivery at about the end of the charter period.	37 38 39 40 41	ECo to have the right to load and/or discharge up to full cargo on open sea by direct transshipment to/from trawlers or other Vessels including factory ships. ECo to arrange for fenders on board the feeding ships. Should the weather circumstances or heavy sea during load operation hinder transshipment operation or endanger the safety of the Vessel, the Master at his sole discretion may leave the feeding ships respectively, instruct the feeding ships to leave from along side until the weather/sea condition has improved. In case of discharge operation feeding Vessel means receiving Vessel. ECo is also to be permitted to load at safe anchorage(s). Any extra insurance for the Vessel necessary on account of transshipment is to be at ECo's expense. Any damage caused to the Vessel by transshipment, provided the Master/Owners have exercised due diligence in all operations to be repaired at ECo's time and expense. ECo shall indemnify and hold the Owners harmless in respect of any liability to third parties which the Owners may sustain by reason of transshipment operation at sea, provided the Master/Owners have exercised due diligence in all operations.	142 143 144 145 146 147 148 149 150 151 152 153 154 155 156
<b>7. The Vessel's condition on redelivery</b>	42	<b>C. HIRE, PAYMENT AND OFF-HIRE</b>	157
On redelivery the Vessel's holds to be properly swept and cleaned.	43	<b>19. Entitlement to hire</b> See Box 30 in ECoTime-99 part I	158
<b>8. Surveys</b>	44	The Vessel shall be employed by ECo in accordance with the ECo Pool Vessel Contribution Agreement 1999 ("the ECo99 Pool Agreement")	159
A joint survey on delivery to be arranged by the Owners and effected in their time. A joint survey on redelivery to be arranged by ECo and effected in their time. Costs for both surveys to be shared equally. ECo shall have the discretion to waive this clause by timely notice to the owners.	45 46 47 48	<b>20. Payment of hire</b>	160
<b>9. Fuel</b>	49	Notwithstanding that the Owners shall be entitled to hire, ECo shall only be bound to pay, and shall pay, to the Owners, within eight days after the end of each calendar month, a sum representing ECo's reasonable estimate of the Owners' entitlement to hire hereunder for the preceding calendar month or part thereof. The first such payment to be made on the eighth day of the calendar month following the date of delivery into the Charter. Such sum shall be adjusted, in relation to the second and any subsequent payment, by the difference between any sum paid in respect of any preceding calendar month or part thereof and the amount due in respect thereof.	161 162 163 164 165 166 167 168 169
The Vessel to be delivered with not less than the quantity of fuel specified in Box 14. The Vessel to be redelivered with about the same quantity of fuel on board as on delivery unless otherwise agreed in Box 15. ECo at port or place of delivery and the Owners at port or place of redelivery to take over and pay for all fuel remaining in the Vessel's bunkers in accordance with paragraph 4 (b) of the ECo99 Pool Agreement of Jan. 1, 1999.	50 51 52 53 54 55		
<b>B. THE VESSEL</b>	56		
<b>10. Description</b>	57		
It is a condition of the Charter that, on delivery and throughout the Charter period, the Vessel shall in all respect conform to the description contained in Part I and any additional Clauses of the Charter and, in the event that the Vessel is described herein as a new building, to the specifications agreed between the Owners and the builder, and that, throughout the Charter period, she shall be maintained by the Owners in a like state and in accordance with OA-plans or similar handed over to ECo.	58 59 60 61 62 63 64		
<b>11. Maintenance, repairs and manning</b>	65		
It is a condition of the Charter that throughout the Charter period the Owners will maintain the Vessel (including bottom cleaning and cleaning of the holds) as a first-class reefer in a thoroughly efficient state in hull, machinery, refrigerating plant, cargo hold and cargo gear and at all times capable of maintaining the obligations warranted in Box 23. The Owners will ensure that the Vessel is at all times manned with an experienced Master, Officers and Crew, fully qualified for trading and handling the Vessel and cargo within the limits of the Charter, and with Master capable of speaking, reading and writing in the English language. For intermediate hold cleaning ECo to pay owners a lumpsum compensation of USD 400 for sweeping and USD 300 for sweeping/washing always subject to such cleaning not being prevented by any regulation or agreement, safety or duration of the ballast voyage.	66 67 68 69 70 71 72 73 74 75 76 77 78		
<b>12. Maintenance and repair of gratings</b>	79		
The Owners shall maintain the gratings in good condition, well fitting and sound. The gratings to be thoroughly inspected upon completion of discharge and damage, if any, to be properly repaired before next loading. ECo or their representatives have the right to inspect the condition of the gratings at all times	80 81 82 83 84		

<b>21. Right to set off</b>	170	and managing of the Vessel, Master, Crew or the Owners), also to arrange and	265
Upon payment of each installment of hire, ECo shall have the right to deduct any	171	pay for although the same shall be under the responsibility of the Master loading,	266
sums due to them under the Charter and any sums retained by them under the	172	stowing, and dunnage and shifting boards (except for any already on board),	267
Scheme. ECo's right to deduct includes but is not limited to the estimated	173	unloading, weighing/tallying if compulsory or if ordered by ECo.	268
amount of off-hire, the estimated amount of hire recoverable by ECo in respect of	174		
the non-availability of space on the Vessel, estimated disbursements for Owners'	175		
account, and estimated amounts due from the Owners in accordance with Clause	176		
9 hereof, any sum for the credit of ECo by reason of an adjustment under Clause	177		
20 hereof, and any other sums payable to ECo pursuant to the terms hereof.	178		
<b>22. Default in payment</b>	179	<b>34. Special Gear</b>	269
The Owners to have a duty to notify ECo when any hire payment has not been	180	Any special gear, including special ropes, hawsers and chains required by the	270
received in accordance with the Charter. In the event of payment being overdue	181	custom of the port for mooring to be for ECo's account unless already on board.	271
by more than 3 banking days from such notification, the Owners have the right	182		
either immediately to withdraw the Vessel from the service of ECo or, if the	183		
Vessel is on a cargo voyage, to withdraw her on completion of the current voyage	184	<b>35. Sublet and chartering-in</b>	272
without any intervention by any Court or without any formality whatsoever and	185	ECo to have the option of subletting the Vessel, but shall always remain	273
without prejudice to any claim which the Owners may have against ECo under the	186	responsible to the Owners for due performance of the Charter.	274
Charter. Unless notice of withdrawal or intended withdrawal at the end of the	187	ECo shall be entitled, where in its sole discretion it considers it necessary for the	275
voyage is given within 15 days after default in payment the Owners shall be	188	proper operation of the Scheme, to charter in on such terms as it thinks fit another	276
deemed to have waived their right of withdrawal and their right to claim	189	Vessel or Vessels to supplement those from time to time employed in the	277
damages	190	Scheme, and any sums payable by way of hire or freight or otherwise to the	278
		Owner of any such Vessel shall be treated as a voyage cost for the purpose of	279
		computing distributions to owners as per Box 30.	280
<b>23. Loss of the Vessel</b>	191	<b>36. Liberty to Employ</b>	281
Should the Vessel be lost or missing, hire to cease from the time when she was	192	ECo shall have the liberty to employ as Owners or disponent Owners in the	282
lost. If the date of loss cannot be ascertained hire to be paid up to the date and	193	Scheme, any Vessel which it has or shall at any time own or have on charter,	283
hour the Vessel was last reported. Any overpaid hire to be returned to ECo	194	other than Vessels currently employed in the Scheme.	284
forthwith.	195		
<b>24. Layup</b>	196	<b>37. Side Logo and Funnel Mark</b>	285
ECo shall have the option of laying up the Vessel, in which case hire shall	197	ECo to have the option of painting their logo on the Vessel's funnel in their own	286
continue but they shall be given credit for any saving which the Owners may	198	colours, and with their own logo, but the Vessel to be redelivered with the	287
make during such period of lay-up through reduction in expenses, less any extra	199	Owners' colours. Painting and repainting to be for ECo's account and in their	288
expenses to which Owners are put as a result of such lay-up. The Owners shall	200	time against a payment of USD 500 on each occasion. ECo also has the option of	289
use their best efforts and take proper steps to reduce costs.	201	flying their house flag during the Charter period.	290
<b>25. Advances</b>	202	<b>38. Owners to provide</b>	291
Should the Master require funds for customary disbursements at any port, ECo or	203	The Owners to provide and pay for the maintenance of and repairs to the Vessel,	292
their agents to advance the same provided any hire under the Charter remains	204	for all provisions, wages, for insurance of the Vessel, for all cabin, deck and	293
unpaid. Such advances and contributions due thereon shall be deducted from the	205	engine room and other necessary spare parts and stores (including cleaning	294
hire.	206	material, cooling medium, lubricating oil, fresh water and water for the boilers),	295
		loading certificates, and garbage dues (unless compulsory or emanating from the	296
		cargo).	297
<b>26. Lien</b>	207	The Owners also to provide runners, blocks and winches or cranes and mooring	298
The Owners shall have a lien upon all subfreights and all subfreights relating to	208	gear facilities. All such gear and equipment to be kept in full working condition	299
carriage carried on board the Vessel for any amounts due under the Charter and	209	for immediate use.	300
ECo to have a lien on the Vessel for all money paid in advance and not earned.	210		
<b>27. Profit charge</b>	211	<b>39. Gangway Watchman</b>	301
Void.	212	The Gangway Watchmen to be provided by the Owners but where compulsory to	302
		employ Gangway Watchmen from shore, the expenses to be for ECo's account.	303
<b>28. Fees and Expenses</b>	213	<b>40. Light</b>	304
See clauses 4 c) and 11 b) of the ECo99 Pool Agreement.	214	The Owners to supply light on deck and in hold, as on board, at all times, free of	305
		expense to Cool Carriers, unless electrical clusters from shore are compulsory, in	306
		which case same to be for ECo's account.	307
<b>29. Suspension of Hire</b>	215	<b>41. Ballast</b>	308
In the event of dydocking or other measures necessary to maintain the efficiency	216	If any solid or fluid ballast is required, all expenses for same including time used	309
of the Vessel, deficiency of men or Owners' stores, strike or refusal to work of	217	in loading and discharging, to be for the Owners' account.	310
Master, Officers or Crew, detention or interference with the Vessel by authorities	218		
or organizations resulting from contravention of any law or regulation or any act	219	<b>42. Day and night working</b>	311
of the Owners, their servants or agents, arrest of the Vessel, boycott or	220	The Vessel to work day and night if required by ECo (overtime is included in	312
blacklisting or any threat of boycott or blacklisting of the Vessel on account of	221	hire) and all cargo gear to be at ECo's disposal during loading and discharging,	313
her flag, technical equipment, lack of certificates or the terms on which the	222	and the Vessel to provide men to work day and night if required. Should	314
Master, Officers or Crew are engaged, breakdown (partial or total) of machinery,	223	watchmen not be available from shore labour, the Owners to provide from the	315
refrigerating plant or cargo gear, fire, collision, grounding, stranding or damage	224	Vessel's crew one winchman per hatch, cost for such work to be for ECo's	316
to hull or other accident, deviation (unless ordered by ECo) any failure of the	225	account.	317
Vessel to maintain the speed set out in Box 23, or any other interference	226	<b>43. Fumigation</b>	318
attributable to the Owners either hindering or preventing the working or the	227	Expenses in connection with fumigation and/or quarantine ordered because of	319
readiness of the Vessel, no hire to be paid in respect of any time actually lost	228	carries carried or ports visited while the Vessel is employed under the Charter to	320
thereby.	229	be for ECo's account. Expenses in connection with all other fumigations and/or	321
Should the Vessel be put back on a voyage by reason of any off-hire event as set	230	quarantine to be for the Owners' account.	322
out above or for any other reason whatsoever for which the Owners are	231		
responsible, it is hereby agreed that hire shall be suspended from the time of her	232	<b>44. Mails, telegrams etc</b>	323
putting back until she is again in the same or an equivalent position and the	233	The Owners to be paid the lump sum per month stated in Box 29 for meals and	324
voyage resumed therefrom. In addition to any off-hire, ECo shall be entitled to	234	entertainment for pilots, clearance and custom officers, tally clerks, stevedores'	325
any directly related expenses and disbursements incurred by reason of any such	235	foremen, ECo's guests, etc. and telegrams.	326
off-hire event, including the bunkers and stores consumed during any period of	236		
off-hire, and shall be entitled to deduct the same from hire and/or any other sums	237	<b>45. Master</b>	327
payable hereunder	238	The Master shall properly and carefully supervise and be responsible for the	328
		loading, stowing and discharging of cargo, and ensure that loading is carried out	329
<b>30. Breakdown of cargo gear or hatch covers</b>	239	so as to give the Vessel her optimum trim, shall prosecute his voyage, and	330
In the event of insufficient power to operate cargo gear or hatch covers or a	240	ensure that loading and discharging are carried out, with the utmost dispatch and	331
breakdown of cargo gear or hatch cover, not caused by negligence of ECo's	241	care, and shall render all customary assistance with the Vessel's Crew, tackle and	332
servants, the Owners to pay for stevedores' waiting time and time lost to be	242	basis as if the Vessel were trading for the Owners' own account. The Master	333
calculated pro rata for the period of such inefficiency in relation to the gear	243	shall be under the orders and directions of ECo as regards the Vessel's speed,	334
required for work. If ECo elect to continue work, the Owners are to pay for shore	244	employment, agency and other arrangements necessary for ECo's use of the	335
appliances in lieu of the Vessel's gear, but in such cases ECo to pay full hire.	245	Vessel.	336
		If ECo shall have reason to be dissatisfied with the Master or any of the Officers	337
<b>31. Transfer of cargo</b>	246	and Crew, the Owners, on receiving particulars of their complaint, are promptly	338
Should anything mentioned in Clause 29 or 30 hinder or prevent the proper care	247	to investigate the matter and if necessary and practicable, are to make a change in	339
and carriage of the cargo, ECo may arrange to transfer such cargo and in order to	248	the appointment.	340
do so may order the ship into any safe port, all at their absolute discretion and at	249		
the Owners' expense. They shall inform the Owners as soon as practicable if	250	<b>46. Instructions and Logs</b>	341
they exercise any powers under this provision and shall be bound at the Owner's	251	The Master shall be furnished by ECo from time to time with all required	342
request to take any steps necessary to preserve the Owners' lien on cargo after	252	instructions and sailing directions. The Master shall keep full and correct logs,	343
transfer	253	including refrigeration logs (as normal in a Vessel of her type) as required by	344
		ECo, all of which shall be available to ECo or to their agents or nominees on	345
<b>D. COSTS, DUTIES AND RIGHTS</b>	254	Demand, and he shall furnish ECo, their agents, nominees or supercargo when	346
<b>32. Vessel's name</b>	255	required, with a true daily copy of any log (including reports in accordance with	347
Void	256	the bunker performance evaluation system referred to in Clause 19 hereof) in the	348
		manner prescribed by ECo, who shall also have full access to the Vessel and to	349
<b>33. ECo to provide</b>	257	all logs and reports and the right to inspect without prior notice.	350
Whilst on hire ECo to order and pay for fuel (not less than is required to cover	258		
expected consumption to next port of call) to pay for port charges, pilotage	259	<b>47. Ship advisor and Supercargo</b>	351
(whether compulsory or not, but harbour pilots always to be for ECo's account),	260	ECo has the right to appoint either a ship advisor who shall accompany the Vessel	352
canal steerman, barge (unless ordered for Vessel's Crew), lights, tug assistance,	261	as ECo's representative and/or a supercargo. They are to be furnished with first	353
consular charges (except those payable to the Consulates of the country of the	262	class accommodation on board and same fare as provided for Master's table	354
Vessel's flag), canal dock and other dues and charges, including any foreign,	263	paying USD 10 per day. The Vessel's Master, Officers and Crew shall co-	355
general, municipality or state taxes, agencies (unless attributable to maintenance	264	operate with them about all respects of the operation of the Vessel that can affect	356
		costs, performance or the custody and handling of the cargo. The Owners,	357



however, to remain responsible for acts, faults and omissions of their Master, Officers and Crew, all matter referred to in Clause 53, and all liability and decisions relating to the safety of the Vessel and Crew.	358 359 360	60. War	452
		(1) For the purpose of this Clause, the words,	453
		(a) "Owners" shall include the shipowners, bareboat charterers, disponent owners, managers or other operators who are charged with the management of the Vessel, and the Master, and	454 455 456
		(b) "War Risks" shall include any war (whether actual or threatened), act of war, civil war, hostilities, revolution, rebellion, civil commotion, warlike operations, the laying of mines, (whether actual or reported), acts of piracy, acts of terrorists, acts of hostility or malicious damage, blockades (whether imposed against all Vessels or imposed selectively against Vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever), by any person, body, terrorist or political group, or the Government of any state whatsoever, which, in the reasonable judgement of the Master and/or the Owners, may be dangerous or are likely to be or to become dangerous to the Vessel, her cargo, crew or other persons on board the Vessel.	457 458 459 460 461 462 463 464 465 466
		(2) The Vessel, unless the written consent of the Owners be first obtained, shall not be ordered to or required to continue to or through, any port, place, area or zone (whether of land or sea), or any waterway or canal, where it appears that the Vessel, her cargo, crew or other persons on board the Vessel, in the reasonable judgement of the Master and/or the Owners, may be, or are likely to be exposed to War Risks. Should the Vessel be within any such place as aforesaid, which only becomes dangerous, or is likely to be or to become dangerous, after her entry into it, she shall be at liberty to leave it.	467 468 469 470 471 472 473 474
		(3) The Vessel shall not be required to load contraband cargo, or to pass through any blockade, whether such blockade be imposed on all Vessels, or is imposed selectively in any way whatsoever against Vessels of certain flags or ownership, or against certain cargoes or crew or otherwise howsoever, or to proceed to an area where she shall be subject, or is likely to be subject to a belligerent's right of search and/or confiscation.	475 476 477 478 479 480
		(4) (a) The Owners may effect war risks insurance in respect of the Hull and Machinery of the Vessel and their other interests (including, but not limited to, loss of earnings and detention, the crew and their Protection and Indemnity Risks), and the premiums and/or calls therefor shall be for their account.	481 482 483 484
		(b) If the Underwriters of such insurance should require payment of premiums and/or calls because, pursuant to ECo's orders, the Vessel is within, or is due to enter and remain within, any area or areas which are specified by such Underwriters as being subject to additional premiums because of War Risks, then such premiums and/or calls shall be reimbursed by ECo to the Owners at the same time as the next payment of hire is due.	485 486 487 488 489 490
		(5) If the Owners become liable under the terms of employment to pay to the Crew any bonus or additional wages in respect of sailing into an area which is dangerous in the manner defined by the said terms, then such bonus or additional wages shall be reimbursed to the Owners by ECo at the same time as the next payment of hire is due.	491 492 493 494 495
		(6) The Vessel shall have liberty:	496
		(a) to comply with all orders, directions, recommendations or advice as to departure, arrival routes, sailing in convoy, ports of call, stoppages, destinations, discharge of cargo, delivery, or in any other way whatsoever, which are given by the Government of the Nation under whose flag the Vessel sails, or other Government to whose law the Owners are subject, or any other Government, body or group whatsoever acting with the power to compel compliance with their orders or directions;	497 498 499 500 501 502 503
		(b) to comply with the order, directions or recommendations of any war risks under writers who have the authority to give the same under the terms of the war risks insurance;	504 505
		(c) to comply with the terms of any resolution of the Security Council of the United Nations, any directives of the European Community, the effective order of any other Supranational body which has the right to issue and give the same, and with national laws aimed at enforcing the same to which the Owners are subject, and to obey the orders and directions of those who are charged with their enforcement;	506 507 508 509 510 511 512
		(d) to divert and discharge at any other port any cargo or part thereof which may render the Vessel liable to confiscation as a contraband carrier;	513
		(e) to divert and call at any other port to change the crew or any part thereof or other persons on board the Vessel when there is reason to believe that they may be subject to internment, imprisonment or other sanctions.	514 515 516 517
		(7) If in accordance with their rights under the foregoing provisions of this Clause, the Owners shall refuse to proceed to the loading or discharging ports, or any one or more of them, they shall immediately inform ECo. No cargo shall be discharged at any alternative port without first giving ECo notice of the Owners' intention to do so and requesting them to nominate a safe port for such discharge. Failing such nomination by ECo within 48 hours of the receipt of such notice and request, the Owners may discharge the cargo at any safe port of their own choice.	518 519 520 521 522 523 524
		(8) If in compliance with any of the provisions of Sub-Clauses (2) to (7) of this Clause anything is done or not done, such shall not be deemed a deviation, but shall be considered as due fulfillment of this Charterparty.	525 526 527
		61. Arbitration	528
		Any dispute arising under the Charter to be referred to arbitration in New York (New York law to apply), one Arbitrator to be nominated by the Owners and the other by ECo and in case the Arbitrators shall not agree then to the decision of an Empire to be appointed by them, the award of the Arbitrators or the Empire to be final and binding upon both parties.	529 530 531 532 533
		If either of the Arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new Arbitrator in his place.	534 535
		If one party fails to appoint an Arbitrator, either originally, or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his Arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an Arbitrator may appoint that Arbitrator to act as sole Arbitrator in the reference and his award shall be binding on both parties as if he had been appointed by consent.	536 537 538 539 540 541
		62. Containers (Clause valid only if container capacity stated in box 15.)	542
		The vessel is capable of accommodating containers at the capacity set out in Box 15F of which capacity the Vessel is equipped with electric plugs for the transportation of reefer containers at the capacity set out in Box 15 G.	543 544 545
		Throughout the Charter period, the Owners will make such capacity available and will maintain fittings necessary to utilize such capacity in a thoroughly efficient state, and shall maintain, in the case of the reefer container capacity, the fittings	546 547 548
48. Cargo Space	361		
The whole reach and burden of the Vessel's holds, deck and usual places of loading and passengers' accommodation (number of berths and price per day stated in Box 18), shall be at ECo's disposal, reserving only proper and sufficient space for the Vessel's Master, Officers and Crew	362 363 364 365		
49. Bills of Lading	366		
ECo shall be responsible for the preparation and issue of Bills of Lading, and shall have the option of using their own regular Bill of Lading from which shall contain a Paramount Clause, New Jason and Both to Blame clauses. Where required by ECo, such Bills of Lading are to be signed by the Master (who, in that event, is authorised to sign Bills of Lading which accurately reflect the quantity and condition of cargo loaded) or by ECo or sub-Charterers, or their respective servants or agents (who are hereby authorised by the Owners and the Master, where such authority is required, to issue and sign such Bills of Lading)	367 368 369 370 371 372 373 374		
E RESPONSIBILITIES AND EXEMPTIONS	375		
50. Claims	376		
In the event that, in Breach of the Charter, the Owners withdrew the Vessel from the Scheme or otherwise terminate the Charter before the effluxion of the Charter period, the provisions of paragraph 4 of the ECo pool agreement to apply.	377 378 379		
In the event that, by reason of any breach of any contract connected with the Scheme between ECo on the one hand and a third party, including the Owner or Disponent Owner of any other Vessel from the time employed in the ECo99 Pool Agreement, on the other, ECo has a claim against such third party other than a claim or part thereof relating to losses solely born by ECo then ECo will be obliged to pay the Owner such proportion of any sums which are due from such third party by reason of such breach as the payment due to the Owners by way of hire for the calendar month during which the breach occurred bore to the total of such payments to the Owners or Disponent Owners of all the Vessels employed in the ECo99 Pool Agreement for such calendar month, provided that, in the event that ECo fails, for whatsoever reason, to recover any such sum from such third party, then their obligation hereunder shall not be enforceable by the Owners and shall so longer arise.	380 381 382 383 384 385 386 387 388 389 390 391 392		
51. Cargo claims	393		
ECo shall be responsible for (subject as below) all claims in connection with cargo under Bills of Lading and they shall insure against such responsibility. ECo shall also take over the handling of all such claims and any other claims in connection with cargo under Bills of Lading issued pursuant to the terms of the Charter, whether brought against ECo, the Owners and/or the Vessel. However, ECo shall be entitled to be indemnified by the Owners against all liabilities and claims caused by unseaworthiness of the Vessel, failure of the Owners or the Vessel's Officers or Crew properly and carefully to supervise loading, stowing and discharging of the Cargo or properly to deliver the cargo to the receivers, where such unseaworthiness and/or failure would constitute a breach by the Owners of the Carrier's obligations under the Hague-Visby Rules.	394 395 396 397 398 399 400 401 402 403 404		
52. Orders, directions and information	405		
The Owners shall be liable for any loss or damage arising out of (a) their Master's, Officers' or Crew's failure to comply with ECo's lawful orders or directions and (b) Master negligently giving incorrect information to ECo or their servants or nominees.	406 407 408 409		
53. Other responsibility	410		
In any event, nothing herein is to be construed as a demise of the Vessel to ECo. The Owners are to remain responsible for the navigation of the Vessel, acts of pilots and tug-boats, crew, care of cargo and all other matter, same as when trading for their own account.	411 412 413 414		
54. Notice of damage to the Vessel	415		
ECo shall not be responsible for damage to the Vessel unless:	416		
(a) the Master advises ECo and the sub-Charterers in writing immediately when ascertained by telegram of any damage sustained by the Vessel for which they are liable and also	417 418 419		
(b) if possible notifies in writing the parties who have caused the damage and endeavours to obtain their admission of liability.	420 421		
Notwithstanding the above, ECo in any event not to be held responsible for damage to the Vessel attributable to fair wear and tear.	422 423		
55. Reimbursement	424		
If for any reason ECo or the Owners are obliged to pay any claims for which the other party has assumed liability under the Charter, that other party hereby agrees to indemnify the Owners or ECo as the case may be against all loss, damage or expense arising or resulting from such claims.	425 426 427 428		
56. Effect on Suspension of Hire Clause	429		
The provisions of this section E shall in no way affect the provisions as to suspension of hire in the Charter.	430 431		
F ADDITIONAL CLAUSES	432		
57. Information	433		
Any information as to the operation of the ECo99 Pool Agreement or the employment of Vessels therein, and the terms of the Charter, shall be kept confidential by the Owners and ECo. ECo reserves the right to disclose such information as to the operation of the Scheme or the employment of Vessels therein (including the ECoTime99 Charter Party form) for the purposes of marketing and/or the introduction of new owners into the Scheme.	434 435 436 437 438 439		
The Owners agree to ECo making such information available to the Owners of other Vessels for the time being employed in the Scheme, on the understanding that such information shall be kept confidential by them.	440 441 442		
58. Salvage	443		
All salvage and assistance to other Vessels to be for the Owners' and ECo's equal benefit after deducting the Master's and Crew's proportion and all legal and other expenses including hire paid under the Charter for time lost in the salvage, also repairs of damage and fuel consumed. ECo to be bound by all measures taken by the Owners in order to secure payment of salvage and to fix its amount.	444 445 446 447 448		
59. General Average	449		
General Average to be settled according to York-Antwerp Rules 1994. Hire not to contribute to General Average	450 451		

and electrical power generating plant necessary to utilize such capacity in a  
thoroughly efficient state. Owners shall provide and pay for the minimum  
quantities of lashing material specified in Box 23F hereof.  
ECOs shall be entitled to load container and/or reefer containers up to the  
capacities mentioned in Boxes 23F and 25G.  
Reefer containers shall, at the commencement of each voyage, be equipped with  
suitable refrigeration equipment to ensure adequate cooling of its content and  
shall also be accompanied with spare part kits. Owners shall be responsible for  
ensuring that the reefer containers are properly connected to the Vessel's power  
supply, that the containers/reefer containers are properly lashed and secured and  
that the Vessel's fittings and power supply are kept in full working order  
throughout the period of each voyage. In addition, the Vessel's crew shall also be  
responsible for monitoring the performance of the reefer containers during each  
voyage and shall use their best endeavours to rectify any faults that may occur

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The Vessel's crew shall be responsible for reporting any loss, damage or failure  
that may occur to any container laden on board the Vessel, whether caused by  
stevedores or any other party.  
The Vessel's crew shall follow the instructions of ECO in relation to this and any  
other matter concerning the handling, operation and stowage of such containers.  
ECOs or their agents to provide Master with Shippers' declared weight of  
containers prior to departure.  
Clause 51 of this Charter shall apply to claims arising out of damage to cargo  
within any such container.

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63. Co-operation against drugs  
Owners and ECO both warrant that they are signatories to the Sea Carrier  
Initiative Agreement. Owners and ECO will mutually discuss to be signatories to  
other similar agreements if and when introduced.

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It is mutually agreed that this contract shall be performed subject to the terms and conditions in this  
Charter, which shall include also Part I.

Place and date

  
AS Agent for Tonnvold Reefer 4 KS  
Signature for the Owners

  
Signature for ECo Shipping Ltd.

# **EXHIBIT “B”**



**ECO**  
SHIPPING*Handwritten:*  
Thordis  
Thorgull**ECo POOL VESSEL CONTRIBUTION AGREEMENT 1999**

(The "ECo 99 Pool Agreement")

**AGREEMENT** between **ECo Shipping Ltd.**, a Liberian corporation established in 1996 by Cool Carriers AB and Eastwind Transport Ltd. ("ECo Ltd."), and Tonnevold Reefer 1 KS, a Norwegian corporation ("Shipowner").

**WHEREAS**, Shipowner wishes to contribute one or more handy-size refrigerated transport vessels under its ownership or disponent ownership (the "Vessel" or "Vessels") to a pool of similar vessels under the commercial management of ECo Ltd. (the "Pool"); and

**WHEREAS**, ECo Ltd. is prepared to employ the Vessel or Vessels in the Pool on terms and conditions set forth below,

**NOW, THEREFORE**, in consideration of the mutual promises of the parties contained herein, it is **AGREED** as follows:

1. The Vessel or Vessels to be contributed by Shipowner to the Pool are listed in Exhibit A hereto. Shipowner warrants to ECo that it is the owner or disponent owner of the Vessel or Vessels. All ships contributed to the Pool by any owner will be refrigerated transport vessels of cargo capacity between approximately 250,000 and 350,000 cubic feet.
2. ECo Ltd. will at any time, upon request, advise Shipowner of the complete current list of all ships in the Pool. Shipowner undertakes to identify to ECo Ltd. prior to signing this Agreement each refrigerated vessel of 250/350,000 cubic feet owned, chartered in, or otherwise commercially controlled by Shipowner or by any other shareholder, parent, subsidiary, or affiliate of Shipowner ("Competing Vessel") and to advise ECo Ltd. when any such Competing Vessel is either added or deleted.
3. Each Vessel entering the Pool will do so by being time-chartered to ECo Ltd. in accordance with the provisions of the ECoTime 99 charter party attached hereto as Exhibit B. A Vessel may enter the Pool at any time and will thereupon be chartered to the Pool for a period of twelve months

# ECO SHIPPING

plus or minus 30 days at ECo's option. The charter will at the conclusion of any 12-month period be automatically extended for a further 12 months, with the extension period to commence on the anniversary of the original date of delivery of the Vessel to ECo Ltd., unless written notice of redelivery is given by either party to the other not later than forty-five (45) days prior to completion of the current 12-month period.

4. Conditions under which each Vessel will be delivered to ECo Ltd. and entered in the Pool include the following:

- a) The place of delivery of the Vessel to ECo Ltd. may not be less favorable geographically than the Malta/Elbe 1 range or Osaka Bay. If the Vessel is in a less favorable position, it must be brought to an equivalent geographical position before entry unless the parties agree on a "ballast penalty" amount or other compensatory arrangements. If the Vessel is delivered to the Pool in a more favorable geographical position than above, a ballast bonus payable to the Shipowner will be calculated and agreed, based on assessing ship's time at current spot market rates and including bunker costs appropriate for the region.
- b) ECo Ltd. will, for the account of the Pool, purchase the bunkers on board at the time of delivery of a Vessel at current Platt's Oilgram prices prevailing at the nearest main bunkering port. When the Vessel is eventually redelivered by ECo Ltd. to the Shipowner, the Shipowner will purchase the bunkers then remaining on board at the then current Platt's Oilgram prices at the nearest main bunkering port.
- c) Shipowner will pay to ECo Ltd. (not for account of the Pool) a nonrefundable management fee of \$20,000 per year of entry in the Pool, payable annually in advance. The first year's fee will be assessed at the time of the Vessel's initial entry into the Pool and will be offset against any payments owed by the Pool to the Shipowner for bunkers or ballast bonus. Subsequent annual management fees will be assessed at 12-month intervals by withholding from the Vessel's share of Pool earnings distributed in each anniversary month.



d) During the period of a Vessel's entry in the Pool, Shipowner will be responsible for crewing and insuring the Vessel and for all aspects of technical management.. The Vessel will at all times be entered in an internationally accepted Protection and Indemnity Club and will have an ITF Blue Card or other equivalent arrangements enabling her to trade world-wide.

5. Notwithstanding the 12-month period of the Vessel's charter to ECo Ltd., Shipowner may at its election at any time, upon sixty (60) days' written notice, withdraw the Vessel from the Pool and terminate the charter to ECo Ltd. subject to the following conditions:

- a) The premature withdrawal must be occasioned by either
  - (i) In the case of a Vessel owned by Shipowner or any affiliate of Shipowner, the sale of the Vessel to an unrelated party; or
  - (ii) In the case of a vessel chartered to Shipowner from an unrelated party, the termination of the charter party in accordance with its terms.
- b) If the Vessel has been specifically fixed on employment beyond the expiration of the 60-day notice period, ECo Ltd. will attempt in good faith to substitute a different ship in order to free the Vessel, with any additional expense incurred by the Pool to be reimbursed by the Shipowner. If, however, substitution proves to be impossible or impractical, then the Vessel must remain in the Pool (perhaps with a different owner) at least until completion of the said fixed employment.
- c) If the premature withdrawal of the Vessel occurs at a time when the total expected spot market earnings of the Vessel from the date of withdrawal to the next 12-month anniversary date exceed the expected earnings of the Vessel as a Pool member during that time interval, then at the time of withdrawal the Shipowner will pay to the Pool the expected earnings differential resulting therefrom. ECo Ltd.'s computation of the earnings differential amount will be discussed fully with Shipowner, and a reputable shipbroker may be engaged as



advisor if either party so requests, with the cost thereof to be shared equally between the Pool and Shipowner. In the event of failure to reach agreement, ECo Ltd.'s determination of the earnings differential amount will be conclusive and binding. If the premature withdrawal of the vessel occurs at a time that is economically favorable to the Pool, no earnings differential payment will be due to Shipowner from the Pool.

6. When any Vessel withdraws from the Pool and is redelivered to Shipowner by ECo Ltd., whether at the end of a 12-month period or prematurely, if she is redelivered in a geographical position more favorable than the Malta/Elbe 1 range or Osaka Bay, a redelivery bonus payable by the Shipowner to the Pool will be calculated and agreed, based on assessing ship's time at current spot market rates and including bunker costs appropriate for the region. A Vessel may not be redelivered in an unfavorable geographical position unless the parties agree on a "positional penalty payment" to Shipowner or other compensatory arrangement.

7. Each Vessel in the Pool will at all times have a Weighting Factor assigned to it that reflects its capacity, by reason of its physical and performance characteristics, to generate a greater or lesser level of earnings relative to other similar tonnage. The Initial Weighting Factor of each of the Vessels will be as set forth in Exhibit A. Shipowner warrants the accuracy of the physical and performance characteristics of the Vessels submitted to ECo Ltd. for use in calculating their Weighting Factors. Weighting Factors of all Vessels in the Pool will be reviewed and reset periodically, not less often than once per year, to reflect observed changes in performance characteristics and relative revenue-generating capacity. ECo Ltd. will normally use the computational algorithms developed by Cool Carriers AB for the purpose of calculating Weighting Factors but reserves the right to adopt other fair and reasonable methods for doing so. If a Vessel is found to under perform with respect to her speed, bunker consumption, or other characteristics submitted by Shipowner and used in calculating the Vessel's Weighting Factor, then Shipowner will be liable for speed/consumption or other performance penalties computed in accordance with the normal practices of the industry. These penalties will be due and



payable, via deduction from Pool distributions, until such time as the Vessel's Weighting Factor will have been revised to correctly reflect the Vessel's performance characteristics.

8. The Pool will be managed and operated in the name of "ECo Shipping Ltd." by personnel seconded to ECo Ltd. by Eastwind Transport Ltd. and UniCool Ltd., and by any other persons that may reasonably be engaged for management or operational purposes. Eastwind Transport Ltd. will serve as overall Administrator of the Pool.

9. The Vessels, and all other ships in the Pool, will be employed on voyage charters, contracts of affreightment, time charters, or other commercial arrangements with the objective of maximizing the total Net Voyage Earnings of all Pool vessels, denominated in U.S. dollars. In the event the Pool realizes any revenues in other currencies, they will be converted to U.S. dollars as soon as possible. All cash held by the Pool will be invested in U.S. Dollar money market funds. "Net Voyage Earnings" means the sum of all charter hire income, freights, demurrage, ballast bonuses, and all other revenues earned by the Pool vessels, less the total of their bunker costs, canal tolls, stevedoring costs, port charges, agency fees and expenses, brokerage and booking commissions, dispatch, and any other voyage costs, including cargo-handling material and any liability insurance for the Pool's account. The foregoing notwithstanding, no vessel will be time chartered out or otherwise specifically committed for a period extending beyond its next 12-month anniversary date unless either ECo Ltd. will have a right of substitution or the approval of the Shipowner will have been obtained in advance.

10. From time to time ECo Ltd. may also charter in ships from the market on a voyage or time-charter basis, provided that the total of all chartered-in tonnage, measured in cubic feet, will never be permitted to exceed 25% of the total cubic capacity of all Pool vessels. Earnings (or losses) accrued by all chartered-in vessels will be added to (or subtracted from) the overall Pool earnings available for distribution to the Pool Vessels.

11. In any calendar month the total earnings of the Pool will equal the total Net Voyage Earnings of the Pool vessels as defined above, plus or minus earnings or losses on chartered-in vessels, less allowable overhead expenses of the Pool.



- a) The earnings of each Pool Vessel in a given month will be calculated in accordance with standard percentage-of-completion rules, in which the earnings on a voyage that takes place during two or more calendar months will be allocated to those months in proportion to the numbers of days of the voyage's total duration that fall in those months. At the end of a month, the earnings for that month on a voyage in progress will be calculated using the best available estimates of voyage duration and total earnings; thereafter, the earnings will be corrected retroactively when final results are known.
- b) Allowable overhead expenses include the salary, benefits, and general office cost allocations of all personnel working on behalf of the Pool, plus travel expenses, audit fees, and other reasonable out-of-pocket expenses incurred on behalf of the Pool. Total personnel and out-of-pocket costs will be estimated for each calendar year in January, with one-twelfth (1/12) of the calculated annual amount being charged against Pool earnings in each month. After the end of a year, out-of-pocket costs actually incurred for the account of the Pool will be computed, with the difference between budgeted and actual costs being assessed against or rebated to, as the case may be, the vessels that were in the Pool during the year on a pro-rated basis. No such adjustment will be made in the case of personnel costs.

12. Net earnings of the Pool in any calendar month will be allocated to the vessels that were entered in the Pool at any time during that month in proportion to (a) the cubic capacities of those vessels, (b) their weighting factors, and (c) the fractional numbers of days during the month when the vessels were on hire to the Pool, as defined in the ECoTime 99 charter party. As an example, if the Pool included only two ships, namely, Vessel X of capacity 300,000 cubic feet, weighting factor 0.90, and 30.0 on-hire days during a given month and Vessel Y with 275,000 cubic feet, weighting factor 1.10, and 29.0 on-hire days, then the earnings allocation for that month would be calculated as follows:



# ECO SHIPPING

Vessel X "claim" =	300,000 x 0.90 x 30.0	=	8,100,000
Vessel Y "claim" =	275,000 x 1.10 x 29.0	=	8,772,500
Share of the month's Pool earnings allocated to Vessel X =	8,100,000 / (8,100,000 + 8,772,500)	=	48.007%
Share of the month's Pool earnings allocated to Vessel Y =	8,772,500 / (8,100,000 + 8,772,500)	=	51.993%

This method of calculation is employed in all circumstances, including in months when a vessel may have entered the Pool during the last day or two.

13. Each vessel in the Pool during any month is entitled eventually to receive cash distributions equal to the earnings allocated to her during that month. All Pool earnings net of allowable overhead expenses and annual management fees will be distributed eventually to Pool vessels; ECo Ltd. itself will not be left with any earnings (or losses) other than the annual management fees.

14. Total earnings of the Pool and the earnings shares allocated to the various Pool vessels for each calendar month will be determined and reported monthly in arrears by ECo Ltd., normally within eight days after the end of the month in question. At about the same time, insofar as permitted by availability of funds (in light of anticipated revenues and expenses), the earnings of the month just ended will be distributed in cash to the (disponent) owners of the various Pool vessels. If the funds available in the Pool following any month of operation are insufficient for the distribution of 100% of that month's earnings, then such lesser percentage of earnings will be distributed to the owners of the vessels *pro rata* as ECo Ltd. determines to be prudent, considering the Pool's projected cash income and obligations; and in such case the undistributed balance of the Pool's earnings for that month will be distributed in the following month. However, at no time will the Pool distribute cash in excess of the total amount of the as-yet-undistributed Pool earnings.

15. Following the end of each month, ECo Ltd. will prepare and submit to Shipowner financial and operational reports showing, *inter alia*, the voyages performed by the Vessels, earnings therefrom, total Pool earnings, share thereof to be distributed to each Vessel, and related financial information. At the end of each calendar year, in addition to its own year-end reporting ECo Ltd. will arrange for an audit



of the Pool's performance and results to be performed at the Pool's expense by a competent internationally recognized auditing firm, with a copy of the audit report to be furnished to Shipowner as soon as available. All of the foregoing information reported to Shipowner will be treated as confidential.

16. Any notices under this agreement may be delivered by mail, electronic mail, telex, or facsimile:

a) If to ECo Ltd. or the Pool, to

c/o Eastwind Transport Ltd.  
444 Madison Avenue  
Suite 200  
New York, NY 10022  
Facsimile: (212) 838-8439  
Telex: 420111 EWINDNY  
E-Mail: 62107718@eln.attmail.com

(b) If to Shipowner, to:

Tonnevold Reefer 1 KS  
C/- O.T. Tonnevold  
P.O. Box 115  
4891 Grimstad, Norway

Facsimile: +47 37 25 88 99  
Telex: 21 386

17. In case of any conflict between the provisions of this ECo Pool Vessel Contribution Agreement and the provisions of the ECoTime 99 charter party, the provisions of this Agreement will prevail. In case of any dispute between the parties, a good faith attempt to settle it shall be made by a meeting of the senior officials controlling the parties. Should such good faith attempt fail to achieve success, the parties shall each appoint a qualified arbitrator, and the two arbitrators so appointed shall jointly select a third, and the dispute shall be finally resolved by the panel of three so chosen by arbitration in New York City, New York. Any decision of the arbitrators shall be binding on both parties. The law of New York shall govern this Agreement.



**ECO**  
**SHIPPING**

**IN WITNESS WHEREOF**, the parties hereto have each executed this document below at the places and dates indicated.

**ECo SHIPPING LTD.**  
New York City New York

**TONNEVOLD REEFER 1 KS**  
Grimstad Norway

By: \_\_\_\_\_  
Name: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# ECO SHIPPING

## ECO Pool Agreement 99

### Exhibit A

#### Current Pool vessels

Vessels contributed by Eastwind, or companies associated with Eastwind

Snowmass	Eastwind	231,983	2,452	1982
Maunakea	Capewind	264,348	2,861	1983
EW McKinley	Eastwind	321,782	3,428	1983
Rosa	Eastwind	264,452	2,875	1984
EW Kenya	Eastwind	280,118	2,991	1985
Arctic Wolf	Sevrybkhodflot	261,576	2,784	1985
Evans	Eastwind	265,319	2,806	1986
EW Cook	Eastwind	257,904	2,811	1986
Saramati	Eastwind	326,112	3,487	1986
Kohfu	Eastwind	262,846	2,943	1986
Fitzroy	Eastwind	331,944	3,541	1987
Vinson	Eastwind	332,219	3,543	1988
Tenfu	Eastwind	262,492	2,933	1988
EW Rainier	Eastwind	270,883	3,179	1988
EW Killimanjaro	Eastwind	270,792	3,177	1988
Kaifu	Eastwind	262,931	2,928	1988
Elbrus	Eastwind	373,588	3,976	1990
Glacier	Eastwind	270,258	3,077	1991
Blue Crystal	Sevrybkhodflot	298,024	3,441	1991
Cape Belle	Capewind	346,408	3,950	1991
Annapurna	Eastwind	347,143	3,943	1992
Cape Blossom	Capewind	347,082	3,950	1993

Vessels contributed by Osterreichischer Lloyd

White Sun	Ost. Lloyd	312,426	3,426	1984
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Vessels contributed by Tonnevold

Thordis	Tonnevold	313,122	3,424	1982
Thorfrid	Tonnevold	237,986	2,653	1982
Thorhild	Tonnevold	306,983	3,447	1983
Thorgull	Tonnevold	313,122	3,424	1983
Thorunn	Tonnevold	313,122	3,424	1983

Index No. 3292 (HB) Year 2008

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EASTWIND MARITIME S.A.,

Plaintiff,

- against -

TONNEVOLD REEFER 7KS, a/k/a TONNEVOLD REEFER 2KS, a/k/a TONNEVOLD REEFER 4KS, a/k/a O.T.  
TONNEVOLD AS, a/k/a TONNEVOLD OT,

Defendant.

DECLARATION OF JOHN G. POLES

*Poles Tublin Stratakis Gonzalez & Weichert, LLP  
Attorneys for Non-Party Eco Shipping Ltd.  
46 Trinity Place, 5<sup>th</sup> Floor  
New York, New York 10006  
Telephone: 212 943 0110  
Telefax: 212 269 9875*

*Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous.*

Dated: .....

Signature .....

Print Signer's Name .....

Service of a copy of the within

is hereby admitted.

Dated:

.....  
Attorney(s) for

PLEASE TAKE NOTICE

☐ that the within is a (certified) true copy of a  
NOTICE OF of the clerk of the within named Court on  
ENTRY

entered in the office

☐ that an Order of which the within is a true copy will be presented for settlement to the  
NOTICE OF Hon. , one of the judges of the within named Court, at  
SETTLEMENT on , at M.

Dated:

Attorney(s) for

To:

Office Address & Tel. No.:

Attorney(s) for

# EXHIBIT 7A

William J. Honan  
Christopher R. Nolan  
HOLLAND & KNIGHT LLP  
195 Broadway  
New York, NY 10007-3189  
(212) 513-3200

ATTORNEYS FOR DEFENDANT  
Tonnevold Reefer 7 KS, A/K/A,  
Tonnevold Reefer 4 KS, A/K/A, AND  
O.T. Tonnevold AS

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EASTWIND MARITIME, S.A.,

Plaintiff,

-against-

Tonnevold Reefer 7 KS,  
a/k/a Tonnevold Reefer 2 KS,  
a/k/a Tonnevold Reefer 4 KS,  
a/k/a O.T. Tonnevold AS,  
a/k/a Tonnevold OT,

Defendant.

08 Civ. 3292 (HB)

**DECLARATION OF  
JAN SIGVART WALLE IN  
SUPPORT OF DEFENDANT'S  
MOTION FOR COUNTER-  
SECURITY PURSUANT TO  
SUPPLEMENTAL RULE E(7)**

I, Jan Sigvart Walle, declare under penalty of perjury under the laws of the United States of America, pursuant to 28 U.S.C. §1746 that the following is true and correct:

1. I am Senior Vice President of Shipping at O.T. Tonnevold AS ("Tonnevold"). I make this Declaration in support of Tonnevold's Motion for Counter-security against Plaintiff Eastwind Maritime, S.A. ("Eastwind").

2. As Senior Vice President, I was directly involved with chartering for the *M/V Thorgull* ("*Thorgull*" or "Vessel").

### The Charter

3. On or about September 29, 2000, Tonnevold Reefer 4 KS entered into a time charter of the *Thorgull* with ECo Shipping Ltd. ("ECo") for a period of about twelve months, which charter was extended by the agreement of the parties until December 20, 2005. On or about September 29, 2000, Tonnevold Reefer 4 KS entered into a pool agreement with ECo to include the *Thorgull*.

4. On or about December 20, 2005, a successor to Tonnevold Reefer 4 KS, Tonnevold Reefer 7 KS, entered into a charter with ECo for charter of the *Thorgull* for a period of about twelve months (the "Charter"). At the same time, Tonnevold Reefer 7 KS and ECo entered into a new pooling agreement with respect to the Vessel, named "ECo 2002 Pool Agreement" ("Pooling Agreement 02"). Both the Charter and the Pooling Agreement 02 were executed by Mr. Charles T. ("Toby") Moors, Vice President of ECo Shipping. A true and accurate copy of the Charter and Pooling Agreement 02 are annexed as Exhibit 1.

5. Pursuant to the Charter and while in the employ of ECo, the *Thorgull* performed a voyage from Los Palmas, Canary Islands to Tarifa, Spain from August 7 – September 18, 2006. During the voyage, the *Thorgull*, under the control of ECo and Eastwind, received for on-carriage recently-caught redfish from at least seven fishing vessels at sea.

6. All of the vessels from which the *Thorgull* received transshipments had been blacklisted by North East Atlantic Fisheries Commission ("NEAFC") and Northwest

Atlantic Fisheries Organization ("NAFO") for activity that had contravened the NEAFC and NAFO rules and regulations.

7. In receiving redfish for on-carriage for the blacklisted vessels, ECo violated the NEAFC regulations, specifically Article 44 of the NEAFC Scheme of Control and Enforcement ("NEAFC Enforcement"), which prohibited such on-carriage of certain protected fish species, such as redfish.

8. The NEAFC is a Regional Fisheries Management Organization ("RFMO") that exists to conserve and manage the fishery resources of the northeast region of the Atlantic Ocean. The NAFO is another RFMO that exists to protect the fishery resources in a contiguous area, the northwest Atlantic Ocean.

9. This violation of the NEAFC rules and regulations is illegal activity in breach of Charter Clause 15, which requires that ECo and Eastwind employ the Vessel in "lawful trades."

10. As a result of the breach, NEAFC placed the *Thorgull* on its blacklist on November 17, 2006 and NAFO placed the *Thorgull* on its blacklist on February 23, 2007.

11. Through the diligent efforts of Tonnevold, the *Thorgull* was removed from the NEAFC blacklist on November 16, 2007, approximately one year after it was placed on the list, and from the NAFO blacklist thereafter.

12. As a result of the blacklisting of the Vessel, Tonnevold was unable to charter the vessel at market rate. In order to mitigate the damages caused by ECo's breach of the Charter, its alter-ego Eastwind agreed to charter the *Thorgull* while the Vessel was blacklisted.

13. On December 6, 2006, ECo, through Eastwind, and Tonnevold entered into a charter for a period of "about 60 days" as part of ECo and Eastwind's agreement to employ the *Thorgull* during the period it was blacklisted ("Mitigating Charter"). The Mitigating Charter is annexed as Exhibit 2.

14. There were three single-page addenda to the Mitigating Charter; Addendum Number 1 is dated February 13, 2007, Addendum Number 2 is dated April 19, 2007, and Addendum Number 3 is dated July 19, 2007. All three addenda incorporate by reference the terms of the Mitigating Charter except revising *inter alia*, delivery, cargo, and hire information for the Vessel and identify Eastwind (acting on behalf of ECo), as Charterers, and Tonnevold, as Owners.

**ECo and Eastwind are Alter-egos**

15. In early 2006, Mr. Moors, acting on behalf of the interests of ECo and Eastwind, indicated to Tonnevold that the Pooling Agreement 02 would end because there were too few ships remaining in the pool and running the pool in New York resulted in high administrative accounting costs.

16. Mr. Moors affirmed to Tonnevold that the *Thorgull*, while leaving the Pooling Agreement 02, would be chartered by Eastwind, on behalf of ECo, in an effort to keep the Vessel working even during the blacklist period. The email exchanges between Tonnevold and Mr. Moors addressing the Pooling Agreement 02 are annexed as Exhibit 3.

17. On or about July 12, 2007, Paul Capkanis, of Eastwind Transport, Ltd., on behalf of ECo, reaffirmed to Tonnevold Eastwind's continued intent to employ the *Thorgull* in a



third addendum to the Mitigating Charter, continuing thereafter until the Vessel was de-listed by the NEAFC.

18. Tonnevold's communications with ECo and Eastwind concerning the original charter in 2000, the breached Charter, the Mitigating Charter and addenda to that Charter have all involved the same personnel, utilizing the same contact information for both entities, including identical mailing addresses, email addresses with the "Eastwind Group," facsimile numbers and telephone numbers.

19. On the Eastwind website, <http://www.eastwindgroup.com>, an Eastwind entity has a New York address of 444 Madison Avenue, Suite 200, New York, New York. Plaintiff Eastwind interchanges itself and other members of the "Eastwind Group" in its Verified Complaint, noting Eastwind operates "from the offices of the "Eastwind Group," when in fact the website describes Eastwind Maritime Inc. as the chief management office. No less than eight "Eastwind" entities are listed on the Eastwind website, none of them being Eastwind Maritime S.A.

20. The New York State Department of State website lists ECo's address as 444 Madison Avenue, Suite 200, New York, the same address as Eastwind. Copies of both the Eastwind website noting the Madison Avenue address and the Department of State website noting the ECo address are annexed as Exhibit 4.

21. Dun & Bradstreet and the New York State Department of State website list John Kousi as the president and chief executive officer of both Eastwind and ECo. A true and correct copy of this information is annexed as Exhibit 5.

22. Both the Charter and the Pooling Agreement 02 were executed by Mr. Moors as "Vice-President" on behalf of ECo shipping. Mr. Moors has also been identified as Vice-President of Eastwind on Internet websites.

23. The alter-ego relationship between ECo and the Eastwind Group is confirmed in notice provision for Pooling Agreement 02, which states:

any notices under this agreement may be delivered by mail, electronic mail, telex, or facsimile:

ECo or the Pool, to  
c/o Eastwind Transport Ltd.  
444 Madison Avenue  
Suite 200  
New York, NY 10022  
Facsimile: (212) 838-8439  
Telex: 420111 EWINDNY  
Email: eastwind@eastwindgroup.com

The address designated for ECo and Eastwind Transport Ltd. is the same address and facsimile listed for Eastwind, as referenced in Exhibit 1.

#### **Tonnevold Damages**

27. As a result of the blacklisting and the ECo and Eastwind breach of the Charter, Tonnevold has suffered damages in the amount of \$836,601.22, as set forth below:

a. Tonnevold made diligent efforts to have the *Thorgull* removed from the NEAFC and NAFO blacklists. The efforts to remove the *Thorgull* from the blacklists cost Tonnevold a total of \$20,500 as a result of meetings and travel expenses on the part of Tonnevold employees when negotiating with the international organizations.

b. Tonnevold has been unable to charter the *Thorgull* on the market and, instead, has been chartering it to Eastwind on a series of voyages at below market rate. The

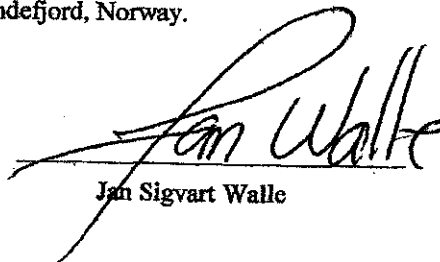
loss of revenue while under the charter to Eastwind from January 1, 2007 – September 11, 2007 was \$227,940.01.

c. Despite Tonnevold's diligent efforts to charter the *Thorgull*, the vessel was unemployed during September 12 - November 28, 2007, while the Vessel remained blacklisted. Tonnevold's damages while the Vessel was unemployed was \$424,129.21.

d. As a result of the blacklisting, Tonnevold also suffered damages due to additional expenses incurred in operating the Vessel amounting to a total of \$164,032.00, including \$147,157.00 for the incremental expenses that Tonnevold incurred as the result of the vessel not trading in its usual trade pattern. The incremental expenses are for crew travel, consumables, and lubricants. The remaining \$16,875 in losses is for the transportation of spare parts from Halifax to Alexandria, Egypt, due to the *Thorgull* not being permitted to enter the port at Halifax because it had been placed on the NEAFC blacklist.

28. Tonnevold has filed for arbitration in accordance with the arbitration provisions contained in all of the Vessel charters described herein.

Executed this 18<sup>th</sup> day of April, 2008 at Sandefjord, Norway.



Jan Sigvart Walle

# EXHIBIT 1

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# ECO SHIPPING

## ECOTIME 99 – PART I

Issued in January 1999

1. Date <del>22</del> December, 2005 20	4. Charterers ECo Shipping Ltd. 80 Broad Street Monrovia, Liberia
2. Vessel M/V Thorgull	
3. Owners Tonnevold Reefer 7 KS c/o O.T. Tonnevold Grimstad, Norway	7. Vessel's present position  At Sea.
	8. Place or range of delivery See ECo <del>99</del> Pool Agreement, 22 December, 2005 Clause 4. <u>2002</u>
5. Charter period  Twelve months (12) Plus/minus 30 days in Charterers' option.	9. Time of delivery  22 - 25 December, 2005
6. Trading limits  Within IWL excluding N. Korea, Finland, Laos, Cambodia.	10. Cancelling date  N/A
	11. Place or range of redelivery Worldwide. See ECo <del>99</del> Pool Agreement 22 Dec. 2005 Clause 6. <u>2002</u>
12. Delivery notices  N/A	13. Redelivery notices  See ECo <del>99</del> Pool Agreement Clause 3. <u>2002</u>
14. Quantity of fuel on delivery  A. IFO max: min: B. MDO max: min:	16. Fuel price (if fixed price agreed, see clause 9)  Delivery IFO : As per ECo <del>99</del> <u>2002</u> Pool Agreement 22 December, 2005
15. Quantity of fuel on redelivery (see Clause 9)  A. IFO max: min: B. MDO max: min:	A. Delivery MDO :  B. Redelivery IFO :  C. Redelivery MDO :

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Vessel's Descriptions (As per attached)									
A. Flag: Liberia		B. Year/Month of building: 1983/02							
C. Call sign: ELTU4									
D. Official reg. number: 10601		E. Telex system/number: Immarat A - 1260746 Immarat C - 46367710							
F. Trade factor: REEFER									
18. Class									
A. Hull: NK		B. Machinery: NK							
C. Ice: N/A									
D. Certificate for temp. between: -25/-32 Cel.		E. USDA-equipment Yes X No							
F. USDA-certificate Yes No X		G. Live Car Certificate Yes No X							
19. Vessel's dimensions									
Length over all 145.58 metres		Draft on full DW summer freeboard: 6765 metres							
Beam moulded 17.80 metres		Higher/closed shelter N/A							
Draft, ballast 4.45 metres		Lower/open shelter N/A							
		Draft, banana laden 5.84 metres							
20. Tonnage									
higher / lower									
A. Gross: 6127 /		B. Panama: 6784 GRT / 5184 NRT							
C. Deadweight all told in MTons on summer freeboard: 6324.5									
D. Net: 2699 /		E. Suez: 6329.47 GRT / 5070.78 NRT							
21. Quantity of stores and freshwater not exceeding 320 mt		22. Operational bunker capacity in cbm 85 % (CBM)							
		IFO 380 902.6 / IFO 180 216.4 MDO: 1149.9							
23. Main engines, speed and consumption									
Bunker viscosity: IFO 180 CST		Makers : MITSUBISHI Type : 8L45GFCA BHP/MCR : 7890 PS AI RPM : 175 RPM							
Ordinary nozzles	Max continuous speed			Service speed			Min continuous speed		
	Knots	RPM	Cons. MTons	Knots	RPM	Cons. MTons	Knots	RPM	Cons. MTons
Full DWT	17.5			17.0			15.5		
Full banana cargo	17.5			17.0			15.5		
Ballast	17.5			17.0			15.5		
Low speed nozzles	Max continuous speed			Service speed			Min continuous speed		
	Knots	RPM	Cons. MTons	Knots	RPM	Cons. MTons	Knots	RPM	Cons. MTons
Full DWT									
Full banana cargo									
Ballast									
24. Auxiliary engines									
Bunker viscosity/blend in percent: 180 CST									
Consumption at sea					Consumption in port				
Min 1.6 and max 4.1 MTons per 24 hours					Min 1.6 and max 3.3 MTons per 24 hours				

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**25. Cargo holds and decks**

A. Compartments furnished with elevator hatches:  
N/A

B. Number of sideports each side:  
Port: 4 Starboard:  
Deck: A Deck:  
Clear opening: 2.05 x 2.05 meters

C. Type of tween deck and weather deck hatch covers:  
Weather deck - End rolling type  
Tween deck - Folding type

D. Type of gratings: Wooden Daiken  
- thickness/material: 42 mm/Apilon Plywood  
- permissible weight of fork lift + cargo: 5.0 Mtons

E. All gratings flush? Yes X No  
- if no, describe:

F. Container capacity:  
on weather deck: N/A TEU  
in holds: N/A TEU  
Lashing material for containers N/A

G. Reefer container capacity with plug-in sets:  
on weather deck: N/A TEU

H. Size of hatches (weather deck, hatch opening L x W)

Hatch No 1 7.03 x 5.32 metres  
Hatch No 2 7.03 x 5.32 metres  
Hatch No 3 7.03 x 5.32 metres  
Hatch No 4 7.03 x 5.32 metres  
Hatch No 5 - x - metres

I. Engine room between holds No. 4 and STERN.

J. Permanent side shorings  
Yes X No

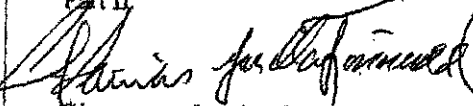

K. Number of separately insulated compartments:  
8

L. Number of compartments with separate cooling units:  
8

CBFT, minimum deck height (in meters) and deck area (in sqm)

	Hatch No 5	Hatch No 4	Hatch No 3	Hatch No 2	Hatch No 1
H	1.30	1.30	1.30	1.30	1.34
FC					
A	20,738	28,813	28,135	30,201	
B	2.18	2.21	2.21	2.25	
C	28,188	28,464	26,571	16,372	
D	2.19	2.17	2.17	2.17	
E	25,607	27,676	24,229	12,127	
F	2.21	2.21	2.17	2.21	
G					
H					
I					
J					
K					
L					
M					
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<p>26. Cargo gear</p> <p>A. Number of cranes: N/A SWL in MTons:</p> <p>B. Number of derricks: 8 SWL in MTons: 5.0</p> <p>C. Union purchase capacity in MTons: 3.5</p> <p>D. Other type of gear: N/A Lifting capacity:</p>	<p>27. Refrigeration and ventilation</p> <p>A. Vessel has Tobson or Ductless ventilation system DUCTLESS</p> <p>B.- Air is circulated upwards or downwards: UPWARDS</p> <p>B. Hatch coamings are ventilated Yes X No <input type="checkbox"/></p> <p>C. Number of air circulations per hour: 90/45</p> <p>D. Number of fresh air renewals per hour: 4/1.5</p> <p>E. Ozone generators Yes X No <input type="checkbox"/></p> <p>F. Refrigeration capacity (0°C evaporation temperature and 30°C cooling water temperature) kcal/hr: 330,000 Kcal/hr</p>
<p>28. Passengers NONE</p> <p>Number of berths: Price per day:</p>	<p>29. Meals, telegrams, entertainment etc (state, if agreed, lump sum per month)</p> <p>USD 800</p>
<p>30. Hire payment in US dollars (state, mode and place of payment; also beneficiary and bank account no.) Bank Name : See ECo Pool Agreement <del>25</del> December, 2005 Sparebanken Rogaland. Bjersted Terrasse 1. 4007 Stavanger, Norway. Att : Jonas Ytreland. Telefax : 47 51 53 54 67 USD Account No. 3185.05.33922</p>	
<p>31. Remarks:</p> <p>In the event of a default by ECo in the performance of its obligations under this Charter-Party that shall not have been cured within a reasonable period, the owners may unilaterally terminate this Charter-Party and withdraw the vessel from ECo's service without economic penalty arising from the withdrawal.</p> <p>Owners to pay a commission of 1.25 % to Orion Shipping AS, Oslo on net payments from the Pool.</p>	
<p>It is mutually agreed that this contract shall be performed subject to the terms and conditions contained in this Charter, which shall include Part I as well as Part II.</p> <p> Signature for the Owners</p> <p> Signature for ECo Shipping Ltd.</p>	



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**ECO POOL VESSEL CONTRIBUTION AGREEMENT 2002**

(The "ECO 2002 Pool Agreement")

**AGREEMENT** between **ECo Shipping Ltd.**, a Liberian corporation established in 1996 by Cool Carriers AB and Eastwind Transport Ltd. ("ECo Ltd."), and Tonnevold Reefer 7 KS, a Norwegian corporation ("Shipowner").

**WHEREAS**, Shipowner wishes to contribute one or more handy-size refrigerated transport vessels under its ownership or disponent ownership (the "Vessel" or "Vessels") to a pool of similar vessels under the commercial management of ECo Ltd. (the "Pool"); and

**WHEREAS**, ECo Ltd. is prepared to employ the Vessel or Vessels in the Pool on terms and conditions set forth below.

**NOW, THEREFORE**, in consideration of the mutual promises of the parties contained herein, it is **AGREED** as follows:

1. The Vessel or Vessels to be contributed by Shipowner to the Pool are listed in Exhibit A hereto. Shipowner warrants to ECo that it is the owner or disponent owner of the Vessel or Vessels. All ships contributed to the Pool by any owner will be refrigerated transport vessels of cargo capacity between approximately 250,000 and 350,000 cubic feet.

2. ECo Ltd. will at any time, upon request, advise Shipowner of the complete current list of all ships in the Pool. Shipowner undertakes to identify to ECo Ltd. prior to signing this Agreement each refrigerated vessel of 250/350,000 cubic feet owned, chartered in, or otherwise commercially controlled by Shipowner or by any other shareholder, parent, subsidiary, or affiliate of Shipowner ("Competing Vessel") and to advise ECo Ltd. when any such Competing Vessel is either added or deleted.

3. Each Vessel entering the Pool will do so by being time-chartered to ECo Ltd. in accordance with the provisions of the ECoTime 99 charter party attached hereto as Exhibit B. A Vessel may enter the Pool at any time and will thereupon be chartered to the Pool for a period of twelve months

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plus or minus 30 days at ECO's option. The charter will at the conclusion of any 12-month period be automatically extended for a further 12 months, with the extension period to commence on the anniversary of the original date of delivery of the Vessel to ECO Ltd., unless written notice of redelivery is given by either party to the other not later than forty-five (45) days prior to completion of the current 12-month period.

4. Conditions under which each Vessel will be delivered to ECO Ltd. and entered in the Pool include the following:

- a) The place of delivery of the Vessel to ECO Ltd. may not be less favorable geographically than the Malta/Elbe 1 range or Osaka Bay. If the Vessel is in a less favorable position, it must be brought to an equivalent geographical position before entry unless the parties agree on a "ballast penalty" amount or other compensatory arrangements. If the Vessel is delivered to the Pool in a more favorable geographical position than above, a ballast bonus payable to the Shipowner will be calculated and agreed, based on assessing ship's time at current spot market rates and including bunker costs appropriate for the region.
- b) ECO Ltd. will, for the account of the Pool, purchase the bunkers on board at the time of delivery of a Vessel at current Platt's Oilgram prices prevailing at the nearest main bunkering port. When the Vessel is eventually redelivered by ECO Ltd. to the Shipowner, the Shipowner will purchase the bunkers then remaining on board at the then current Platt's Oilgram prices at the nearest main bunkering port.
- c) Shipowner will pay to ECO Ltd. (not for account of the Pool), in respect of each entered vessel, a nonrefundable management fee of \$25,000 per year of entry in the Pool, payable annually in advance. The first year's fee will be assessed at the time of the Vessel's initial entry into the Pool and will be offset against any payments owed by the Pool to the Shipowner for bunkers or ballast bonus. Subsequent annual management fees will be assessed in five equal installments by withholding from the Vessel's share of Pool earnings distributed during the first five calendar months of each year of entry.

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- d) During the period of a Vessel's entry in the Pool, Shipowner will be responsible for crewing and insuring the Vessel and for all aspects of technical management. The Vessel will at all times be entered in an internationally accepted Protection and Indemnity Club and will have an ITF Blue Card or other equivalent arrangements enabling her to trade world-wide.

5. Notwithstanding the 12-month period of the Vessel's charter to ECo Ltd., Shipowner may at its election at any time, upon sixty (60) days' written notice, withdraw the Vessel from the Pool and terminate the charter to ECo Ltd. subject to the following conditions:

- a) The premature withdrawal must be occasioned by either
- (i) In the case of a Vessel owned by Shipowner or any affiliate of Shipowner, the sale of the Vessel to an unrelated party; or
  - (ii) In the case of a vessel chartered to Shipowner from an unrelated party, the termination of the charter party in accordance with its terms.
- b) If the Vessel has been specifically fixed on employment beyond the expiration of the 60-day notice period, ECo Ltd. will attempt in good faith to substitute a different ship in order to free the Vessel, with any additional expense incurred by the Pool to be reimbursed by the Shipowner. If, however, substitution proves to be impossible or impractical, then the Vessel must remain in the Pool (perhaps with a different owner) at least until completion of the said fixed employment.
- c) If the premature withdrawal of the Vessel occurs at a time when the total expected spot market earnings of the Vessel from the date of withdrawal to the next 12-month anniversary date exceed the expected earnings of the Vessel as a Pool member during that time interval, then at the time of withdrawal the Shipowner will pay to the Pool the expected earnings differential resulting therefrom. ECo Ltd.'s computation of the earnings differential amount will be discussed fully with Shipowner, and a reputable shipbroker may be engaged as

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## ECO SHIPPING

advisor if either party so requests, with the cost thereof to be shared equally between the Pool and Shipowner. In the event of failure to reach agreement, ECo Ltd.'s determination of the earnings differential amount will be conclusive and binding. If the premature withdrawal of the vessel occurs at a time that is economically favorable to the Pool, no earnings differential payment will be due to Shipowner from the Pool.

6. When any Vessel withdraws from the Pool and is redelivered to Shipowner by ECo Ltd., whether at the end of a 12-month period or prematurely, if she is redelivered in a geographical position more favorable than the Malta/Elbe 1 range or Osaka Bay, a redelivery bonus payable by the Shipowner to the Pool will be calculated and agreed, based on assessing ship's time at current spot market rates and including bunker costs appropriate for the region. A Vessel may not be redelivered in an unfavorable geographical position unless the parties agree on a "positional penalty payment" to Shipowner or other compensatory arrangement.

7. Each Vessel in the Pool will at all times have a Weighting Factor assigned to it that reflects its capacity, by reason of its physical and performance characteristics, to generate a greater or lesser level of earnings relative to other similar tonnage. The Initial Weighting Factor of each of the Vessels will be as set forth in Exhibit A. Shipowner warrants the accuracy of the physical and performance characteristics of the Vessels submitted to ECo Ltd. for use in calculating their Weighting Factors. Weighting Factors of all Vessels in the Pool will be reviewed and reset periodically, not less often than once per year, to reflect observed changes in performance characteristics and relative revenue-generating capacity. ECo Ltd. will normally use the computational algorithms developed by Cool Carriers AB for the purpose of calculating Weighting Factors but reserves the right to adopt other fair and reasonable methods for doing so. If a Vessel is found to under perform with respect to her speed, bunker consumption, or other characteristics submitted by Shipowner and used in calculating the Vessel's Weighting Factor, then Shipowner will be liable for speed/consumption or other performance penalties computed in accordance with the normal practices of the industry. These penalties will be due and

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payable, via deduction from Pool distributions, until such time as the Vessel's Weighting Factor will have been revised to correctly reflect the Vessel's performance characteristics.

8. The Pool will be managed and operated in the name of "ECO Shipping Ltd" or "Reefership Ltd" by personnel seconded to ECO Ltd. by Eastwind Transport Ltd. and LaauritzenCool AB., and by any other persons that may reasonably be engaged for management or operational purposes. Eastwind Transport Ltd. will serve as overall Administrator of the Pool.

9. The Vessels, and all other ships in the Pool, will be employed on voyage charters, contracts of affreightment, time charters, or other commercial arrangements with the objective of maximizing the total Net Voyage Earnings of all Pool vessels, denominated in U.S. dollars. In the event the Pool realizes any revenues in other currencies, they will be converted to U.S. dollars as soon as possible. All cash held by the Pool will be invested in U.S. Dollar money market funds. "Net Voyage Earnings" means the sum of all charter hire income, freights, demurrage, ballast bonuses, and all other revenues earned by the Pool vessels, less the total of their bunker costs, canal tolls, stevedoring costs, port charges, agency fees and expenses, brokerage and booking commissions, dispatch, and any other voyage costs, including cargo-handling material and any liability insurance for the Pool's account. The foregoing notwithstanding, no vessel will be time chartered out or otherwise specifically committed for a period of more than 12 months unless either ECO Ltd. will have a right of substitution or the approval of the Shipowner will have been obtained in advance.

10. From time to time ECO Ltd. may also charter in ships from the market on a voyage or time-charter basis, provided that the total of all chartered-in tonnage, measured in cubic feet, will never be permitted to exceed 25% of the total cubic capacity of all Pool vessels. Earnings (or losses) accrued by all chartered-in vessels will be added to (or subtracted from) the overall Pool earnings available for distribution to the Pool Vessels.

11. In any calendar month the total earnings of the Pool will equal the total Net Voyage Earnings of the Pool vessels as defined above, plus or minus earnings or losses on chartered-in vessels, less allowable overhead expenses of the Pool.

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- a) The earnings of each Pool Vessel in a given month will be calculated in accordance with standard percentage-of-completion rules, in which the earnings on a voyage that takes place during two or more calendar months will be allocated to those months in proportion to the numbers of days of the voyage's total duration that fall in those months. At the end of a month, the earnings for that month on a voyage in progress will be calculated using the best available estimates of voyage duration and total earnings; thereafter, the earnings will be corrected retroactively when final results are known.
- b) Allowable overhead expenses include the salary, benefits, and general office cost allocations of all personnel working on behalf of the Pool, plus travel expenses, audit fees, and other reasonable out-of-pocket expenses incurred on behalf of the Pool. Total personnel and out-of-pocket costs will be estimated for each calendar year in January, with one-twelfth (1/12) of the calculated annual amount being charged against Pool earnings in each month. After the end of a year, out-of-pocket costs actually incurred for the account of the Pool will be computed, with the difference between budgeted and actual costs being assessed against or rebated to, as the case may be, the vessels that were in the Pool during the year on a pro-rated basis. No such adjustment will be made in the case of personnel costs.

12. Net earnings of the Pool in any calendar month will be allocated to the vessels that were entered in the Pool at any time during that month in proportion to (a) the cubic capacities of those vessels, (b) their weighting factors, and (c) the fractional numbers of days during the month when the vessels were on hire to the Pool, as defined in the ECoTime 99 charter party. As an example, if the Pool included only two ships, namely, Vessel X of capacity 300,000 cubic feet, weighting factor 0.90, and 30.0 on-hire days during a given month and Vessel Y with 275,000 cubic feet, weighting factor 1.10, and 29.0 on-hire days, then the earnings allocation for that month would be calculated as follows:

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Vessel X "claim" =	$300,000 \times 0.90 \times 30.0$	=	8,100,000
Vessel Y "claim" =	$275,000 \times 1.10 \times 29.0$	=	8,772,500
Share of the month's Pool earnings allocated to Vessel X =	$8,100,000 / (8,100,000 + 8,772,500)$	=	48.007%
Share of the month's Pool earnings allocated to Vessel Y =	$8,772,500 / (8,100,000 + 8,772,500)$	=	51.993%

This method of calculation is employed in all circumstances, including in months when a vessel may have entered the Pool during the last day or two.

13. Each vessel in the Pool during any month is entitled eventually to receive cash distributions equal to the earnings allocated to her during that month. All Pool earnings net of allowable overhead expenses and annual management fees will be distributed eventually to Pool vessels; ECO Ltd. itself will not be left with any earnings (or losses) other than the annual management fees.

14. Total earnings of the Pool and the earnings shares allocated to the various Pool vessels for each calendar month will be determined and reported monthly in arrears by ECO Ltd., normally within eight days after the end of the month in question. At about the same time, insofar as permitted by availability of funds (in light of anticipated revenues and expenses), the earnings of the month just ended will be distributed in cash to the (disponent) owners of the various Pool vessels. If the funds available in the Pool following any month of operation are insufficient for the distribution of 100% of that month's earnings, then such lesser percentage of earnings will be distributed to the owners of the vessels *pro rata* as ECO Ltd. determines to be prudent, considering the Pool's projected cash income and obligations; and in such case the undistributed balance of the Pool's earnings for that month will be distributed in the following month. However, at no time will the Pool distribute cash in excess of the total amount of the as-yet-undistributed Pool earnings.

15. Following the end of each month, ECO Ltd. will prepare and submit to Shipowner financial and operational reports showing, *inter alia*, the voyages performed by the Vessels, earnings therefrom, total Pool earnings, share thereof to be distributed to each Vessel, and related financial information. At the end of each calendar year, in addition to its own year-end reporting ECO Ltd. will arrange for an audit



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of the Pool's performance and results to be performed at the Pool's expense by a competent internationally recognized auditing firm, with a copy of the audit report to be furnished to Shipowner as soon as available. All of the foregoing information reported to Shipowner will be treated as confidential.

16. Any notices under this agreement may be delivered by mail, electronic mail, telex, or facsimile:

a) if to ECO Ltd. or the Pool, to

c/o Eastwind Transport Ltd.  
444 Madison Avenue  
Suite 200  
New York, NY 10022  
Facsimile: (212) 838-8439  
Telex: 420111 EWINDNY  
E-Mail: eastwind@eastwindgroup.com

(b) if to Shipowner, to:

Tonnevold Reefer 7KS  
c/- O.T. Tonnevold  
Grinestad, Norway  
Facsimile: +47 37 25 88 99  
E-Mail: post@ott.no

17. In case of any conflict between the provisions of this ECO Pool Vessel Contribution Agreement and the provisions of the ECOTime 99 charter party, the provisions of this Agreement will prevail. In case of any dispute between the parties, a good faith attempt to settle it shall be made by a meeting of the senior officials controlling the parties. Should such good faith attempt fail to achieve success, the parties shall each appoint a qualified arbitrator, and the two arbitrators so appointed shall jointly select a third, and the dispute shall be finally resolved by the panel of three so chosen by arbitration in New York City, New York. Any decision of the arbitrators shall be binding on both parties. The law of New York shall govern this Agreement.



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IN WITNESS WHEREOF, the parties hereto have each executed this document below at the places and dates indicated.

ECO SHIPPING LTD.

TONNEVOLD REEFER 7KS

By: Charles T. Moors  
Name:

Title: Vice President

Date: 20 December 2005



By: [Signature]  
Name: JAN OLAF TONNEVOLD

Title: DIRECTOR


Date: 21 DECEMBER 2005

By: [Signature]  
Name: LEIF LAUVAS

Title: DIRECTOR

# EXHIBIT 7B

# **EXHIBIT 2**

1. Shipbroker ORION SHIPPING AS Strandveien 50 N 1365 Lysaker Norway	<b>BIMCO UNIFORM TIME-CHARTER          (AS REVISED 2001)          CODE NAME: "BALTIME 1939"</b> 
3. Owners/Place of business Tønnevoed Reefer 7 KS Grimstad, Norway	4. Charterers/Place of business Eco Shipping Ltd 80 Broad Street Monrovia, Liberia
5. Vessel's Name MV "Thorgull"	6. GT/NT See Clause 50
7. Class See Clause 50	8. Indicated brake horse power (bhp)
9. Total tons d. w. (abt.) on summer freeboard See Clause 50	10. Cubic feet grain/bale capacity See Clause 50
11. Permanent bunkers (abt.) See Clause 50	12. Speed capability in knots (abt.) on a consumption in tons (abt.) of See Clause 50
13. Present position Trading	14. Period of hire (Cl. 1) About 60 days
15. Port of delivery (Cl. 1) Dop Buenavista, Colombia, ATDNSHINC	16. Time of delivery (Cl. 1) 15th December, 2006 or on completion present voyage
17. (a) Trade limits (Cl. 2) Always afloat always within IWL excluding Russia, Israel, Cuba and Turkey, Europe, Medit, USA and Canada. War and warlike zones and areas excluded by UN resolutions  (b) Cargo exclusions specially agreed All cargoes ultimately destined to Iraq or other UN sanctioned countries. Fish that is caught illegally or illegal to trade. Charterers and Shippers to provide sufficient fenders for transshipment	
18. Bunkers on re-delivery (state min. and max. quantity) (Cl. 5) See Clause 40	19. Charter hire (Cl. 6) USC 87 per cbft/30 days inclot, payable every 30 days in advance. Hire from 15th Feb to be USC 120 / 30 days.
20. Hire payment (state currency, method and place of payment; also beneficiary and bank account) (Cl. 6) See Clause 47	
21. Place or range of re-delivery (Cl. 7) Redel dop 1 gsp Nigeria, ATDNSHINC	22. Cancelling date (Cl. 21) 15th December, 2006 (See box 16)
23. Dispute resolution (state 22(A), 22(B) or 22(C), if 22(C) agreed Place of Arbitration must be stated) (Cl. 22)	24. Brokerage commission and to whom payable (Cl. 24) 1,25 % commission to Orion Shipping A/S
25. Numbers of additional clauses covering special provisions, if agreed Clauses 25 to 60 as attached	

It is mutually agreed that this Contract shall be performed subject to the conditions contained in this Charter which shall include PART I as well as PART II. In the event of a conflict of conditions, the provisions of PART I shall prevail over those of PART II to the extent of such conflict.

(continued)		"BALTIME 1939" (Revised 2001) UNIFORM TIME-CHARTER	PART I
Signature (Owners)		Signature (Charterers)	

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WORKING COPY

## PART II

## "BALTIME 1939" Uniform Time-Charter (as revised 2001)

It is agreed between the party mentioned in <u>Box 3</u> as Owners of the Vessel named in <u>Box 5</u> of the gross/net tonnage indicated in <u>Box 6</u> , classed as stated in <u>Box 7</u> and of indicated brake horse power (bhp) as stated in <u>Box 8</u> , carrying about the number of tons deadweight indicated in <u>Box 9</u> on summer freeboard inclusive of bunkers, stores and provisions, having as per builder's plan a cubic-foot grain/bale capacity as stated in <u>Box 10</u> , exclusive of permanent bunkers, which contain about the number of tons stated in <u>Box 11</u> , and fully loaded capable of steaming about the number of knots indicated in <u>Box 12</u> in good weather and smooth water on a consumption of about the number of tons fuel oil stated in <u>Box 12</u> , now in position as stated in <u>Box 13</u> and the party mentioned as Charterers in <u>Box 4</u> , as follows:	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	ropes and chains required by the custom of the port for mooring shall be for the Charterers' account. The Vessel shall be fitted with winches, derricks, wheels and ordinary runners capable of handling lifts up to <u>2.5</u> tons.	68 69 70 71
<b>1. Period/Port of Delivery/Time of Delivery.</b> The Owners let, and the Charterers hire the Vessel for a period of the number of calendar months indicated in <u>Box 14</u> from the time (not a Sunday or a legal holiday unless taken over) the Vessel is delivered and placed at the disposal of the Charterers between 9 a.m. and 6 p.m. or between 9 a.m. and 2 p.m. if on Saturday, at the port stated in <u>Box 15</u> in such available berth where she can safely lie always afloat, as the Charterers may direct, the Vessel being in every way fitted for ordinary cargo service. The Vessel shall be delivered at the time indicated in <u>Box 16</u> .	16 17 18 19 20 21 22 23 24 25 26 27	<b>5. Bunkers See Clause 40.</b> The Charterers at port of delivery and the Owners at port of re-delivery shall take over and pay for all fuel oil remaining in the Vessel's bunkers at current price at the respective ports. The Vessel shall be re-delivered with not less than the number of tons and not exceeding the number of tons of fuel oil in the Vessel's bunkers stated in <u>Box 18</u> .	72 73 74 75 76 77 78 79
<b>2. Trade</b> The Vessel shall be employed in lawful trades for the carriage of lawful merchandise only between safe ports or places where the Vessel can safely lie always afloat within the limits stated in <u>Box 17</u> . No live stock nor injurious, inflammable or dangerous goods (such as acids, explosives, calcium carbide, ferro silicon, naphtha, motor spirit, tar, or any of their products) shall be shipped.	28 29 30 31 32 33 34 35 36	<b>6. Hire</b> The Charterers shall pay as hire the rate stated in <u>Box 19</u> per 30 days commencing in accordance with Clause 1 until re-delivery to the Owners. Payment of hire shall be made in cash, in the currency stated in <u>Box 20</u> , without discount, every 30 days, in advance, and in the manner prescribed in <u>Box 20</u> . In default of payment the Owners shall have the right of withdrawing the Vessel from the service of the Charterers, without noting any protest and without interference by any court or any other formality whatsoever and without prejudice to any claim the Owners may otherwise have on the Charterers under the Charter.	80 81 82 83 84 85 86 87 88 89 90 91 92
<b>3. Owners' Obligations See Clause 30.</b> The Owners shall provide and pay for all provisions and Wages, for insurance of the Vessel, for all deck and Engine-room stores and maintain her in a thoroughly efficient state in hull and machinery during service. The Owners shall provide winchmen from the crew to operate the Vessel's cargo handling gear, unless the crew's employment conditions or local union or port regulations prohibit this, in which case qualified shore-winchmen shall be provided and paid for by the Charterers.	37 38 39 40 41 42 43 44 45 46 47	<b>7. Re-delivery</b> The Vessel shall be re-delivered on the expiration of the Charter in the same good order as when delivered to the Charterers (fair wear and tear excepted) at an ice-free port in the Charterers' option at the place or within the range stated in <u>Box 21</u> , between 9 a.m. and 6 p.m. and 9 a.m. and 2 p.m. on Saturday, but the day of re-delivery shall not be a Sunday or legal holiday. The Charterers shall give the Owners not less than ten five days' notice at which port and on about which day the Vessel will be re-delivered. Should the Vessel be ordered on a voyage by which the Charter period will be exceeded the Charterers shall have the use of the Vessel to enable them to complete the voyage, provided it could be reasonably calculated that the voyage would allow redelivery about the time fixed for the termination of the Charter, but for any time exceeding the termination date the Charterers shall pay the market rate if higher than the rate stipulated herein.	93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111
<b>4. Charterers' Obligations</b> The Charterers shall provide and pay for all fuel oil, port charges, pilotages (whether compulsory or not), canal, steersmen, boatage, lights, tug assistance, consular charges (except those pertaining to the Master, officers and crew), canal, dock and other dues and charges, including any foreign general municipality or state taxes, also all dock, harbour and tonnage dues at the ports of delivery and re-delivery (unless incurred through cargo carried before delivery or after re-delivery), agencies, commissions, also shall arrange and pay for loading, trimming, stowing (including dunnage and shifting boards, excepting any already on board), unloading, weighing, tallying and delivery of cargoes, surveys on hatches, meals supplied to officials and men in their service and all other charges and expenses whatsoever including detention and expenses through quarantine (including cost of fumigation and disinfection). All ropes, slings and special runners actually used for loading and discharging and any special gear, including special	48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67	<b>8. Cargo Space</b> The whole reach and burthen of the Vessel, including lawful deck capacity shall be at the Charterers' disposal, reserving proper and sufficient space for the Vessel's Master, officers, crew, tackle, apparel, furniture, provisions and stores. <b>Master</b> The Master shall prosecute all voyages with the utmost despatch and shall render customary assistance with the Vessel's crew. The Master shall be under the orders of the Charterers as regards employment, agency, or other arrangements. The Charterers shall indemnify the Owners against all consequences or liabilities arising from the Master, officers or Agents signing Bills of Lading or other documents or otherwise complying with such orders, as well as from any irregularity in the Vessel's papers or for overcarrying goods. The Owners shall not be responsible for shortage, mixture, marks, nor for Number of pieces or packages, nor for damage to or claims on cargo caused by bad stowage or otherwise. If the Charterers have reason to be dissatisfied with the conduct of the Master or any officer, the Owners, on receiving particulars of the complaint, promptly to	112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134

## PART II

## "BALTIME 1939" Uniform Time-Charter (as revised 2001)

investigate the matter, and, if necessary and practicable, to make a change in the appointments.	135	after having completed loading or discharging. The Vessel shall not be obliged to force ice, if on account of ice the Master considers it dangerous to remain at the loading or discharging place for fear of the Vessel being frozen in and/or damaged, he has liberty to sail to a convenient open place and await the Charterers' fresh instructions. Unforeseen detention through any of above causes shall be for the Charterers' account.	199
10. Directions and Logs	136		200
The Charterers shall furnish the Master with all instructions and sailing directions and the Master shall keep full and correct logs accessible to the Charterers or their Agents.	137		201
	138		202
	139		203
	140		204
	141		205
11. Suspension of Hire etc.	142		206
(A) in the event of drydocking or other necessary measures to maintain the efficiency of the Vessel, deficiency of men or Owners' stores, breakdown of machinery, damage to hull or other accident, either hindering or preventing the working of the Vessel and continuing for more than twenty-four consecutive hours, no hire shall be paid in respect of any time lost thereby during the period in which the Vessel is unable to perform the service immediately required. Any hire paid in advance shall be adjusted accordingly.	143	16. Loss of Vessel	207
	144	Should the Vessel be lost or missing, hire shall cease from the date when she was lost. If the date of loss cannot be ascertained half hire shall be paid from the date the Vessel was last reported until the calculated date of arrival at the destination. Any hire paid in advance shall be adjusted accordingly.	208
(B) in the event of the Vessel being driven into port or to anchorage through stress of weather, trading to shallow harbours or to rivers or ports with bars or suffering an accident to her cargo, any detention of the Vessel and/or expenses resulting from such detention shall be for the Charterers' account even if such detention and/or expenses, or the cause by reason of which either is incurred, be due to, or be contributed to by, the negligence of the Owners' servants.	145		209
	146		210
	147		211
	148		212
	149	16. Overtime	213
	150	The Vessel shall work day and night if required. The Charterers shall refund the Owners their outlays for all overtime paid to officers and crew according to the hours and rates stated in the Vessel's articles. Officers and Crews overtime always to be for Owners account.	214
	151		215
	152		216
	153		217
	154		218
	155	17. Lien	219
	156	The Owners shall have a lien upon all cargoes and sub-freights belonging to the Time-Charterers and any Bill of Lading freight for all claims under this Charter, and the Charterers shall have a lien on the Vessel for all moneys paid in advance and not earned.	220
	157		221
	158		222
	159		223
	160		224
	161	18. Salvage	225
12. Responsibility and Exemption	162	All salvage and assistance to other vessels shall be for the Owners' and the Charterers' equal benefit after deducting the Master's, officers' and crew's proportion and all legal and other expenses including hire paid under the charter for time lost in the salvage, also repairs of damage and fuel oil consumed. The Charterers shall be bound by all measures taken by the Owners in order to secure payment of salvage and to fix its amount.	226
The Owners only shall be responsible for delay in delivery of the Vessel or for delay during the currency of the Charter and for loss or damage to goods onboard, if such delay or loss has been caused by want of due diligence on the part of the Owners or their Manager in making the Vessel seaworthy and fitted for the voyage or any other personal act or omission or default of the Owners or their Manager. The Owners shall not be responsible in any other case nor for damage or delay whatsoever and howsoever caused even if caused by the neglect or default of their servants. The Owners shall not be liable for loss or damage arising or resulting from strikes, lock-outs or stoppage or restraint of labour (including the Master, officers or crew) whether partial or general. The Charterers shall be responsible for loss or damage caused to the Vessel or to the Owners by goods being loaded contrary to the terms of the Charter or by improper or careless bunkering or loading, stowing or discharging of goods or any other improper or negligent act on their part or that of their servants.	163		227
	164		228
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	169		233
	170	19. Sublet	234
	171	The Charterers shall have the option of subletting the Vessel, giving due notice to the Owners, but the original Charterers shall always remain responsible to the Owners for due performance of the Charter.	235
	172		236
	173		237
	174		238
	175	20. War ("Conwartime 1993")	239
	176	(A) For the purpose of this Clause, the words:	240
	177	(i) "Owners" shall include the shipowners, bareboat charterers, disponent owners, managers or other operators who are charged with the management of the Vessel, and the Master; and	241
	178	(ii) "War Risks" shall include any war (whether actual or threatened), act of war, civil war, hostilities, revolution, rebellion, civil commotion, sabotage operations, the laying of mines (whether actual or reported), acts of piracy, acts of terrorists, acts of hostility or malicious damage, blockades (whether imposed against all vessels or imposed selectively against vessels of certain flags or ownership, or against certain cargoes or crews or otherwise howsoever), by any person, body, terrorist or political group, or the Government of any state whatsoever, which, in the reasonable judgement of the Master and/or the Owners, may be dangerous or are likely to be or to become dangerous to the Vessel, her cargo, crew or other persons on board the Vessel.	242
	179	(B) The Vessel, unless the written consent of the Owners be first obtained, shall not be ordered to or required to continue to or through, any port, place, area or zone (whether of land or sea), or any waterway or canal, where it appears that the Vessel, her cargo, crew or other persons on board the Vessel, in the reasonable	243
	180		244
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	189		253
13. Advances	189		254
The Charterers or their Agents shall advance to the Master, if required, necessary funds for ordinary disbursements for the Vessel's account at any port. <u>The Charterers not to be responsible for application of such funds.</u> charging only interest at 8-2 per cent. p.a., such advances shall be deducted from hire.	190		255
	191		256
	192		257
	193		258
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	195		260
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	197		262
	198		263
14. Excluded Ports	199		264
The Vessel shall not be ordered to nor bound to enter:	200		
(A) any place where fever or epidemics are prevalent or to which the Master, officers and crew by law are not bound to follow the Vessel;	201		
(B) any ice-bound place or any place where lights, lightships, marks and buoys are or are likely to be withdrawn by reason of ice on the Vessel's arrival or where there is risk that ordinarily the Vessel will not be able on account of ice to reach the place or to get out	202		



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judgement of the Master and/or the Owners, may be, or	265	or more of them, they shall immediately inform the	334
are likely to be, exposed to War Risks. Should the Vessel	266	Charterers. No cargo shall be discharged at any	335
be within any such place as aforesaid, which only	267	alternative port without first giving the Charterers notice	336
becomes dangerous, or is likely to be or to become	268	of the Owners' intention to do so and requesting them	337
dangerous, after her entry into it, she shall be at liberty	269	to nominate a safe port for such discharge. Failing such	338
to leave it.	270	nomination by the Charterers within 48 hours of the	339
(C) The Vessel shall not be required to load contraband	271	receipt of such notice and request, the Owners may	340
cargo, or to pass through any blockade, whether such	272	discharge the cargo at any safe port of their own choice.	341
blockade be imposed on all vessels, or is imposed	273	(H) If in compliance with any of the provisions of sub-	342
selectively in any way whatsoever against vessels of	274	clauses (B) to (G) of this Clause anything is done or not	343
certain flags or ownership, or against certain cargoes	275	done, such shall not be deemed a deviation, but shall	344
or crews or otherwise howsoever, or to proceed to an	276	be considered as due fulfilment of this Charter.	345
area where she shall be subject, or is likely to be subject	277		
to a belligerent's right of search and/or confiscation.	278	21. Cancelling	346
(D) (i) The Owners may effect war risks insurance in	279	Should the Vessel not be delivered by the date indicated	347
respect of the Hull and Machinery of the Vessel and their	280	in Box 22, the Charterers shall have the option of	348
other interests (including but not limited to loss of	281	cancelling if the Vessel cannot be delivered by the	349
earnings and detention, the crew and their protection	282	cancelling date, the Charterers shall declare	350
and indemnity risks), and the premiums and/or calls	283	within 48 hours after receiving notice thereof whether	351
therefor shall be for their account.	284	they cancel or will take delivery of the Vessel.	352
(ii) If the Underwriters of such insurance should require	285		
payment of premiums and/or calls because, pursuant	286	22. Dispute Resolution	353
to the Charterers' orders, the Vessel is within, or is due	287	*) (A) This Charter shall be governed by and construed in	354
to enter and remain within, any area or areas which are	288	accordance with English law and any dispute arising	355
specified by such Underwriters as being subject to	289	out of or in connection with this Charter shall be referred	356
additional premiums because of War Risks, then such	290	to arbitration in London in accordance with the Arbitration	357
premiums and/or calls shall be reimbursed by the	291	Act 1996 or any statutory modification or re-enactment	358
Charterers to the Owners at the same time as the next	292	thereof save to the extent necessary to give effect to the	359
payment of hire is due.	293	provisions of this Clause.	360
(E) If the Owners become liable under the terms of	294	The arbitration shall be conducted in accordance with	361
employment to pay to the crew any bonus or additional	295	the London Maritime Arbitrators Association (LMAA)	362
wages in respect of sailing into an area which is	296	Terms current at the time when the arbitration	363
dangerous in the manner defined by the said terms,	297	proceedings are commenced.	364
then such bonus or additional wages shall be re-	298	The reference shall be to three arbitrators. A party	365
imbursed to the Owners by the Charterers at the same	299	wishing to refer a dispute to arbitration shall appoint its	366
time as the next payment of hire is due.	300	arbitrator and send notice of such appointment in writing	367
(F) The Vessel shall have liberty:-	301	to the other party requiring the other party to appoint its	368
(i) to comply with all orders, directions, recom-	302	own arbitrator within 14 calendar days of that notice and	369
mendations or advice as to departure, arrival, routes,	303	stating that it will appoint its arbitrator as sole arbitrator	370
sailing in convoy, ports of call, stoppages, destinations,	304	unless the other party appoints its own arbitrator and	371
discharge of cargo, delivery, or in any other way	305	gives notice that it has done so within the 14 days	372
whatsoever, which are given by the Government of the	306	specified. If the other party does not appoint its own	373
Nation under whose flag the Vessel sails, or other	307	arbitrator and give notice that it has done so within the	374
Government to whose laws the Owners are subject, or	308	14 days specified, the party referring a dispute to	375
any other Government, body or group whatsoever acting	309	arbitration may, without the requirement of any further	376
with the power to compel compliance with their orders	310	prior notice to the other party, appoint its arbitrator as	377
or directions;	311	sole arbitrator and shall advise the other party	378
(ii) to comply with the order, directions or recom-	312	accordingly. The award of a sole arbitrator shall be	379
mendations of any war risks underwriters who have the	313	binding on both parties as if he had been appointed by	380
authority to give the same under the terms of the war	314	agreement.	381
risks insurance;	315	Nothing herein shall prevent the parties agreeing in	382
(iii) to comply with the terms of any resolution of the	316	writing to vary these provisions to provide for the	383
Security Council of the United Nations, any directives of	317	appointment of a sole arbitrator.	384
the European Community, the effective orders of any	318	In cases where neither the claim nor any counterclaim	385
other Supranational body which has the right to issue	319	exceeds the sum of US\$50,000 (or such other sum as	386
and give the same, and with national laws aimed at	320	the parties may agree) the arbitration shall be conducted	387
enforcing the same to which the Owners are subject,	321	in accordance with the LMAA Small Claims Procedure	388
and to obey the orders and directions of those who are	322	current at the time when the arbitration proceedings are	389
charged with their enforcement;	323	commenced.	390
(iv) to divert and discharge at any other port any cargo or	324	*) (B) This Charter shall be governed by and construed in	391
part thereof which may render the Vessel liable to	325	accordance with Title 9 of the United States Code and	392
confiscation as a contraband carrier;	326	the Maritime Law of the United States and any dispute	393
(v) to divert and call at any other port to change the crew	327	arising out of or in connection with this Contract shall	394
or any part thereof or other persons on board the Vessel	328	be referred to three persons at New York, one to be	395
when there is reason to believe that they may be subject	329	appointed by each of the parties hereto, and the third by	396
to internment, imprisonment or other sanctions.	330	the two so chosen; their decision or that of any two of	397
(G) If in accordance with their rights under the foregoing	331	them shall be final, and for the purposes of enforcing	398
provisions of this Clause, the Owners shall refuse to	332	any award, judgement may be entered on an award by	399
proceed to the loading or discharging ports, or any one	333	any court of competent jurisdiction. The proceedings	400
		shall be conducted in accordance with the rules of the	401



## PART II

## "BALTIME 1939" Uniform Time-Charter (as revised 2001)

Society of Maritime Arbitrators, Inc.	402	to seek such relief or take such steps as it considers	444
in cases where neither the claim nor any counterclaim	403	necessary to protect its interest.	445
exceeds the sum of US\$50,000 (or such other sum as	404	(v) Either party may advise the Tribunal that they have	446
the parties may agree) the arbitration shall be conducted	405	agreed to mediation. The arbitration procedure shall	447
in accordance with the Shortened Arbitration Procedure	406	continue during the conduct of the mediation but the	448
of the Society of Maritime Arbitrators, Inc. current at the	407	Tribunal may take the mediation timetable into account	449
time when the arbitration proceedings are commenced.	408	when setting the timetable for steps in the arbitration.	450
(C) This Charter shall be governed by and construed in	409	(vi) Unless otherwise agreed or specified in the	451
accordance with the laws of the place mutually agreed	410	mediation terms, each party shall bear its own costs	452
by the parties and any dispute arising out of or in	411	incurred in the mediation and the parties shall share	453
connection with this Charter shall be referred to	412	equally the mediator's costs and expenses.	454
arbitration at a mutually agreed place, subject to the	413	(vii) The mediation process shall be without prejudice	455
procedures applicable there.	414	and confidential and no information or documents	456
(D) Notwithstanding (A), (B) or (C) above, the parties	415	disclosed during it shall be revealed to the Tribunal	457
may agree at any time to refer to mediation any difference	416	except to the extent that they are disclosable under the	458
and/or dispute arising out of or in connection with this	417	law and procedure governing the arbitration.	459
Charter.	418	(Note: The parties should be aware that the mediation	460
In the case of a dispute in respect of which arbitration	419	process may not necessarily interrupt time limits.)	461
has been commenced under (A), (B) or (C) above, the	420	(E) If Box 24 in Part I is not appropriately filled in, sub-	462
following shall apply:-	421	clause (A) of this Clause shall apply. Sub-clause (D)	463
(I) Either party may at any time and from time to time	422	shall apply in all cases.	464
elect to refer the dispute or part of the dispute to	423	* (A), (B) and (C) are alternatives; indicate alternative	465
mediation by service on the other party of a written notice	424	agreed in Box 23.	466
(the "Mediation Notice") calling on the other party to agree	425		
to mediation.	426	23. General Average	467
(ii) The other party shall thereupon within 14 calendar	427	General Average shall be settled according to York/	468
days of receipt of the Mediation Notice confirm that they	428	Antwerp Rules, 1994 and any subsequent modification	469
agree to mediation, in which case the parties shall	429	thereof. Hire shall not contribute to General Average.	470
thereafter agree a mediator within a further 14 calendar	430		
days, failing which on the application of either party a	431	24. Commission	471
mediator will be appointed promptly by the Arbitration	432	The Owners shall pay a commission at the rate stated	472
Tribunal ("the Tribunal") or such person as the Tribunal	433	in Box 24 to the party mentioned in Box 24 on any hire	473
may designate for that purpose. The mediation shall	434	paid under the Charter, but in no case less than is	474
be conducted in such place and in accordance with such	435	necessary to cover the actual expenses of the Brokers	475
procedure and on such terms as the parties may agree	436	and a reasonable fee for their work. If the full hire is not	476
or, in the event of disagreement, as may be set by the	437	paid owing to breach of Charter by either of the parties	477
mediator.	438	the party liable therefor shall indemnify the Brokers	478
(iii) If the other party does not agree to mediate, that fact	439	against their loss of commission. Should the parties	479
may be brought to the attention of the Tribunal and may	440	agree to cancel the Charter, the Owners shall indemnify	480
be taken into account by the Tribunal when allocating	441	the Brokers against any loss of commission but in such	481
the costs of the arbitration as between the parties.	442	case the commission not to exceed the brokerage	482
(iv) The mediation shall not affect the right of either party	443	on one year's hire.	483

WORKING COPY

**RIDER TO CHARTER PARTY  
FOR M/V "THORGULL" CP 6TH. DECEMBER 2006**

**CL. 25 DRY DOCKING**

No dry docking during time charter period except in case of emergency.

**CL.26 ITF**

The officers and crew of the vessel are to be covered for the duration of this Charter Party by a bona fide trade union agreement.

Loss of time may be considered as off-hire and extra expenses incurred as a result of any action stemming from crew or union problems shall be for Owners account.

**CL.27 VESSEL INSURANCE**

The Charteres to insure vessel for liability to hull and forward copy of the policy to Owners.

H & M value: 7,5 Mill.

**CL.28 STEVEDORE DAMAGE**

Stevedore damages caused to the vessel or her fittings to be settled directly between the Master/Owners and the Stevedores. Charteres to be kept immediately advised of occurrence of such event. Should the Master/Owners not be able to obtain agreement with the Stevedores causing the damage, Charteres to remain ultimately responsible, but only as far as they have been kept advised as above or as soon as practicable possible.

**CL.29 SUSPENSION OF HIRE**

Should the vessel be put back, whilst on voyage, by reason of an accident to ship or onboard injury or sickness to the crew, the hire shall be suspended from the time of the vessel's putting back until she is again in the same position and voyage resumed therefrom. Bunkers spent during that period to be for Owners account, as well as other extra expenses.

**CL.30 VESSEL'S CREW/MASTER INSTRUCTIONS:**

Vessel's Crew/Master instructions:

- Raising and lowering derricks and preparation of loading / discharge and

- to operate derricks/cranes in loading resp. discharge - if permitted by shore regulations - otherwise shore labour to be for Charteres account.
- Opening and closing of hatches in preparation for loading and discharging and intermediate ones for cargo protection, if necessary, provided local regulation allow.
  - Vessel's crew to lash/secure and tally
  - Supervision of loading and/or discharging
  - Maintaining power while loading/discharging and care of winches
  - Shifting ship during loading/discharging and shifting berth
  - Docking and undocking
  - Assistance during bunkering
  - Master to provide for Chrts daily tally and cargo plan
  - Owners/Vessel to place atleast 1 representative for tallying during loading and discharging operations

#### **CL.31 LASHING MATERIALS**

All lashing material, as onboard incl. airbags + pipes/pistols to be put at Charteres free disposal.

Owners may invoice for airbags, etc that may be damaged during the period of the charter.

#### **CL.32 VESSEL'S HOLDS**

The Owners agree that vessel on delivery shall have clean and dry holds, and free from any smell to Charterers / Suveyors satisfaction. Charterers to redeliver vessel in same condition, but have the option of redelivery the vessel before cleaning of holds paying a lumpsum o USD 1.800 to the Owners.

Charterers to pay USD 1100,- for hold cleaning per discharge.

#### **CL.33 DISABLE GEAR**

In the event of any disabled crane or running gear or insufficient power to drive same, Charteres have the right to deduct hire for the period the vessel is unable to work on a prorata basis, and to deduct standby charges, if any as per voucher.

#### **CL.34 VESSEL'S CERTIFICATES**

The Owners confirm that the vessel has full certificates to operate within the trading limits and warrant to maintain the in force during this charter.

**CL.35 LIGHTERING APPARATURE**

The vessel to supply lightering apparatus for night work, whenever required by the Charterers or their port agents.

**CL.36 OPENING / CLOSING OF HATCHES**

The crew to open and close hatches, whenever required by Charterers or their port agents, free of expence, provided permitted by local regulations.

**CL.37 VESSEL'S COMMUNICATION EQUIPMENT**

The vessel's radiostation and communication equipment to be at Charterers disposal day and night, Sundays and holidays. Charterers to pay USD 700/30 days for communication and representation.

**CL.38 WAR RISK INSURANCE**

Basis war risk for Owners account, any additional war risk on vessel/crew to be for Charterers account.

**CL.39 MASTER'S SUPERVISION AND REPORTING**

The Master shall supervise stowage of the cargo thoroughly and let one of his officers control all loading, handling, stowage, and discharging operation, and he shall furnish the Charterers, when required, with stowageplan. The Master also to fill in voyage reports and other ordinary reports, as may be required by the Charterers.

**CL.40 BUNKERS**

Bunkers basis same/same.

On redelivery Charterers have the option to redeliver the vessel with the same quantity as on delivery. Any differences in quantity on redelivery to be paid basis the price ruling at the closest bunker port to redelivery.

Vessel to be delivered with full bunkers.

Owners agree to arrange for bunkering on Charterers behalf during the t/c contract if required. Bunkering to be closely coordinated between Owners/Charters and Master . Bunker requirements always in Masters descretion/judgement.

**CL.41 TRADING TO USA**

When USA as a trading area following clauses are included (as attached): C-TPAT clause, US Custom 24 HRS clause, US Security clause, USA bunker clause

**CL.42 TRANSHIPMENT CLAUSE**

Charteres have the right to perform transhipment of cargo at the open sea and/or in the roads of ports, alongside motherships and/or ( at Charteres option) alongside fishing trawlers, always in close cooperation between Master of the reefer vessel and Master of the mothership/fishing trawler , and always weather and conditions permitting, whereas:

A: if transhipment performed alongside mothership:

- aa) Master of the reefer vessel is obliged to agree with Master of the mothership the time and manner of mooring operation.
- ab) The mothership is to carry a sufficient number of pneumatic rubber fenders enabling safe mooring of the reefer vessel alongside the mothership.
- ac) If, in the judgement of the Master of the reefer vessel , the weather/sea conditions have become, or are threatening to become within a short time dangerous for the safety of the reefer vessel , Master of the reefer vessel may, and is obliged to, always in mutual agreement with Master of the mothership, unmoor alongside the mothership as quickly as compatible with safety, and in such event Master of the mothership is to render all necessary assistance.

B: if transhipment performed alongside fishing trawler :

- ba) The time and manner of mooring/unmooring operation shall be decided upon by Master of the reefer vessel.
- bb) Charteres are to furnish the reefer vessel (against Master's receipt in writing) with a sufficient number of pneumatic rubber fenders enabling the reefer vessel and the fishing trawler to safely moor and lie alongside each other.  
Master of the reefer vessel is to exercise utmost diligence in protecting the fenders from Loss. All fenders as supplied by Charteres to the reefer vessel shall remain the Property of Charteres and shall be returned to the at any time during the currency of this Charter Party (on demand) but latest on redelivery of the reefer vessel from this Charter. Owners not to be held responsible for fair and tear of the fenders.
- bc) The reefer vessel is to carry on board mooring ropes necessary for safe mooring of trawlers alongside the reefer vessel at open sea. Charteres shall have free use of such ropes, and shall not be held responsible for fair wear and tear thereof.
- bd) If, in the judgement of the Master of the reefer vessel, the weather/sea conditions have become, or are threatening to become within a short time dangerous for the safety, of the reefer vessel and or fishing trawler, Master of the reefer vessel is to order the trawler to inmoor from alongside the reefer vessel as quickly as compatible with

safety and in such event the crew of the reefer vessel is to render all necessary assistance in unmooring the trawler.

be)The reefer vessel is to provide her own crew for handling onboard the reefer vessel mooring ropes for the fishing trawler.

Each party bears under all circumstances their own damages, incl. consequential Damages suffered by the vessel and crew during the period of such transshipment incl. movement for approaching, holding together and detaching of two vessels, and shall not make any claim against the other party. It is however understood such damages of the vessel should be covered by their own hull insurance respectively. Any additional insurance premium, if required for such transshipment operation to be for Charters account .

#### CL.43 INSTRUCTIONS

The Master to follow Charters instructions as far as these are not in contradiction to the law, failing which, Charters have the right to keep Owners responsible for the eventual fault of the Master

#### CL.44 REPRESENTATION

Charterers to pay USD 10,00/ day for victualling for Charteres representative. Representation on Charteres behalf see Clause 37.

#### CL.45 SUPERCARGO

The Charters have the right to place a representative onboard during the charter. Charteres to arrange for necessary insurance and no claim to be passed to Owners.

#### CL.46 HIRE PAYMENT

The hire is payable every 30 days in advance, less Charters outlays for Owners account ( as approved by Owners) and commission to Owners' bankers, however last payment of hire to be adjusted to expected date of redelivery.

#### CL.47 OWNERS BANKING DETAILS

Tønnevold Reefer 7 KS  
Postbox 115  
4891 Grimstad

Bank:  
Sparebank 1 Sr-Bank  
Postbox 114  
4065 Stavanger  
Norway  
Account Nr: 3185.05.33922  
Swift: SPRONO22

**CL.48 CLAIMS & ARREST**

Should the vessel by any reason of cargo claim, be arrested or otherwise detained, it is clearly agreed between the Owners and the Charteres, that the Owners in the first instance and without delay, directly or via their P and I Club must arrange, as soon as possible, circumstances permitting, the release of the vessel by putting up sufficient required guarantees.

**CL.49 VESSEL P&I**

The Owners confirm that the vessel is covered by a first class P and I Club for the duration of this Charterparty.  
P&I club: Gard

**CL.50 VESSEL DESCRIPTION**

As per attachment.

**CL.51 TEMPERATURE**

Temperature – as per vessels description – above

**CL.52 SCHEDULE**

Charterers to keep Owners currently informed of vessel's schedule and name of agents each port, who also to attend to Owners/vessel's matter at no additional cost.  
Any extraordinary agency function to be agreed directly between Owners and agents or Owners option to appoint a husbandry agent.

**CL.53 ADDITIONAL CLAUSES**

It is understood that the New Jason Clause, New Both-to-Blame Collision Clause, London Reefer Clause are to form part of this C/P



**CL.54 WATCHMEN**

Compulsory watchmen to be for Charterers account.

**CL.55 BUNKER QUALITY**

Bunker quality cl. - as per vessel's description

**CL.56 OPTIONS**

Deleted.

**CL.57 P & C CLAUSE**

This contract to be kept strictly private and confidential

**CL.58 HATCH SEALING CLAUSE**

Charterers have the right to order the master to seal the hatches and access ways to the cargo compartments. Master of the vessel to report the seal numbers to Charterers along with the load report and or discharge report.

In case master or crew need to gain access to the cargo spaces and or any of the sealed spaces the master is to report to Charterers the time, date and reason for this access. The master is then to report to Charterers the time and date that the seals were replaced.

Access ways/point to the reefer equipment are for practical reasons not to be sealed - since the crew need to have regular access to these spaces.

Charterers are to supply owners with suitable sealing equipment - suitability in master's discretion - or owners will supply sealing equipment at Charterers expense.

**CL. 59 Fuel Sulphur Content Clause for Time Charter Parties**

Notwithstanding anything else contained in this Charter Party, the Charterers shall supply fuels of such specifications and grades to permit the vessel, at all times, to meet the maximum sulphur content requirements of any emission control zone when the vessel is trading within that zone. The Charterers shall indemnify, defend and hold



harmless the Owners in respect of any loss, liability, delay, fines, costs or expenses arising or resulting from the Charterers' failure to comply with this Clause.

For the purpose of this Clause, "emission control zone" shall mean zones as stipulated in Marpol Annex VI and/or zones regulated by regional and/or national authorities such as, but not limited to, the EU and the US Environmental Protection Agency.

**CL. 60 ISPS/MTSA CLAUSE FOR TIMECHARTER AND OTHER  
ADDITIONAL CLAUSES.**

(a)(i) The Owners shall comply with the requirements of the International Code for the Security of Ships and of Port Facilities and the relevant amendments to Chapter XI of SOLAS (ISPS Code) relating to the Vessel and "the Company" (as defined by the ISPS Code). If trading to or from the United States or passing through United States waters, the Owners shall also comply with the requirements of the US Maritime Transportation Security Act 2002 (MTSA) relating to the Vessel and the "Owner" (as defined by the MTSA).

(ii) Upon request the Owners shall provide the Charterers with a copy of the relevant International Ship Security Certificate (or the Interim International Ship Security Certificate) and the full style contact details of the Company Security Officer (CSO).

(iii) Loss, damages, expense or delay (excluding consequential loss, damages, expense or delay) caused by failure on the part of the Owners or "the Company"/"Owner" to comply with the requirements of the ISPS Code/MTSA or this Clause shall be for the Owners' account, except as otherwise provided in this Charter Party.

(b)(i) The Charterers shall provide the Owners and the Master with their full style contact details and, upon request, any other information the Owners require to comply with the ISPS Code/MTSA. Where sub-letting is permitted under the terms of this Charter Party, the Charterers shall ensure that the contact details of all sub-charterers are likewise provided to the Owners and the Master. Furthermore, the Charterers shall ensure that all sub-charter parties they enter into during the period of this Charter Party contain the following provision:

*"The Charterers shall provide the Owners with their full style contact details and, where sub-letting is permitted under the terms of the charter party, shall ensure that the contact details of all sub-charterers are likewise provided to the Owners".*

(ii) Loss, damages, expense or delay (excluding consequential loss, damages, expense or delay) caused by failure on the part of the Charterers to comply with this Clause shall be for the Charterers' account, except as otherwise provided in this Charter Party.

(c) Notwithstanding anything else contained in this Charter Party all delay, costs or expenses whatsoever arising out of or related to security regulations or measures required by the port facility or any relevant authority in accordance with the ISPS Code/MTSA including, but not limited to, security guards, launch services, vessel escorts, security fees or taxes and inspections, shall be for the Charterers' account, unless such costs or expenses result solely from the negligence of the Owners, Master or crew. All measures required by the Owners to comply with the Ship Security Plan shall be for the Owners' account.

(d) If either party makes any payment which is for the other party's account according to this Clause, the other party shall indemnify the paying party.

### **U.S. Customs 24 Hours Rule Clause for Time Charter Parties**

- (a) If loading cargo destined for the US or passing through US ports in transit, the Charterers shall:

(i) Provide all necessary information, upon request by the Owners, to the Owners and/or their agents to enable them to submit a timely and accurate cargo declaration directly to the US Customs; or

(ii) If permitted by US Customs Regulations (19 CFR 4.7) or any subsequent amendments thereto, submit a cargo declaration directly to the US Customs and provide the Owners with a copy thereof.

In all circumstances, the cargo declaration must be submitted to the US Customs latest 24 hours in advance of loading.

- (b) The Charterers assume liability for and shall indemnify, defend and hold harmless the Owners against any loss and/or damage whatsoever (including consequential loss and/or damage) and any expenses, fines, penalties and all other claims of whatsoever nature, including but not limited to legal costs, arising from the Charterers' failure to comply with the provisions of sub-clause (a).

- (c) If the Vessel is detained, attached, seized or arrested as a result of the Charterers' failure to comply with the provisions of sub-clause (a), the Charterers shall provide a bond or other security to ensure the prompt release of the Vessel. Notwithstanding any other provision in this Charter Party to the contrary, the Vessel shall remain on hire.

### **USA Bunkering Clause**

Owners certify that the vessel is and will remain so throughout the duration of this charter, eligible for bunkering privileges in the United States of America and its territories and possessions, under all present and United States Laws and/or regulations and is not, nor will be restricted, as to bunkering at any other countries or port of call during this charter.

### **U.S. Security Clause for Voyage Chartering**

If the Vessel calls in the United States, including any U.S. territory, the following provisions shall apply with respect to any applicable security regulations or measures:

#### *Reporting*

The Vessel or its agents shall report and send all notices as required to obtain entry and exit clearances from the relevant U.S. authorities.

Any delay caused by the failure to so report shall be for the Owners' account, unless such failure to report is caused by or attributable to the Charterers or their representatives or agents including but not limited to the shipper and/or receiver of the cargo.

#### *Clearances*

Unless caused by the Owners' negligence, any delay suffered or time lost in obtaining the entry and exit clearances from the relevant U.S. authorities shall count as laytime or time on demurrage.

#### *Expenses*

Any expenses or additional fees relating to the cargo, even if levied against the Vessel, that arise out of security measures imposed at the loading and/or discharging port and/or any other port to which the Charterers order the Vessel, shall be for the Charterers' account.

#### *Notice of Readiness*

Notwithstanding anything to the contrary contained in this Charter Party the Vessel shall be entitled to tender Notice of Readiness whether cleared for entry or not by any relevant U.S. authority.

### **U.S. Customs-Trade Partnership Against Terrorism (C-TPAT) Clause**

The Charterers have voluntarily signed the C-TPAT Agreement with the U.S. Customs Service.

The Owners, Master and Crew will use reasonable efforts to assist the Charterers to comply with their obligations under the C-TPAT Agreement. However, under no circumstances shall the Owners, Master and Crew be liable for any delays, losses or damages howsoever arising out of any failure to meet the requirements of the C-TPAT Agreement signed by the Charterers.

The Charterers agree to indemnify and hold the Owners, Master and Crew harmless for any claims made against the Owners, Master and Crew or for any delays, losses, damages, expenses or penalties suffered by the Owners arising out of the C-TPAT Agreement signed by the Charterers.

11 *Rider to M/V THORGULL, 6<sup>TH</sup> DEC. 2006*

**VESSEL'S DETAILS**

\*\*\*\*\*

# **EXHIBIT 3**

-----Original Message-----

From: reefer@orion-shipping.com [mailto:[reefer@orion-shipping.com](mailto:reefer@orion-shipping.com)]

Sent: 25. januar 2007 14:41

To: OTT Ship

Subject: thorunn + thorgull - eco

TO.: "O.T.TØNNEVOLD AS"

FROM: ORION SHIPPING AS

DATE: 25-JAN-2007 14:41

MSG.: 96719

pål/morten

fyg foll sent toby today:

re. thorunn/thorgull - closing of eco pool

--

understand you are putting the last work into the final accounts and the statements which hope will include a summary of the last 6 months and the pool earnings. last one rcvd by tonnevoid is from july last year.

the results from decmber was a little dissapointing. throunn made a trip to klaipeda and she and thorgull were at that time the only vessels in the pool right?), so would expect more to be credited to owners during december than what they rcvd.

pls comment

thks + rgds

-----  
Email: reefer@orion-shipping.com

web: <http://www.orion-shipping.com>

Phone: +47 67 83 89 89 - Fax: +47 67 10 88 52

Espen C. Harr Mob: +47 901 23 305

Morten Saetre Mob: +47 995 13 000

Peter Oeyen Mob: +47 907 75 739

---

**From:** Moors, Toby [mailto:tmoors@eastwindgroup.com]

**Sent:** 19. april 2006 14:32

**To:** Pål Aimar Sørensen

**Cc:** Jan Walle

**Subject:** RE: ECo pool future??

Jan - Paul / Toby

I have the spreadsheets - I will send them shortly - needed to review them last night

The offhire for Thorgull is correct - vessel lost time in Moin waiting for the Deck generator

Working on the format for a revised Pool - it is complex as I intend to bring in all our smaller ships, including those outside the current pool (we have chartered some more ships on period and bought 3 more in last 12 months).

On t/c , as advised a few weeks ago, the rate we would 'safely' want to charter in order to not risk losing money would probably be lower than 'acceptable' to the various Owners in your K/s - especially as the Dec / Jan / Feb months were pretty poor in the market. So, I prefer the pool idea as it spreads risk and the entire group of ships gain from the 12 month charters and the COAs we have inhouse (which may not involve ships like Thorgull / Thorunn.

I hope to have the skeleton together by the end of the week - when is your next Board meeting as a deadline ?

Thanks

T

Toby Moors  
Eastwind New York

**From:** Jan Walle  
**Sent:** 31. mai 2006 14:17  
**To:** 'Moors, Toby'  
**Cc:** OTT Ship  
**Subject:** Eco pool future

Hi Toby,

We are still missing promised input from you regarding future pool opportunities.  
I need latest next week what you can offer regarding future deployment for Thorgull and Thorunn.

Please let this mail be my last remainder.

**Best Regards**

Jan Walle  
Senior Vice President  
Shipping Division  
O.T.Tønnevoid AS  
Direct line: +47 37 25 88 72  
Mobile: +47 90 03 18 95  
Fax: +47 37 25 88 99  
E-Mail: jw@ott.no



**From:** Moors, Toby [mailto:tmoors@eastwindgroup.com]  
**Sent:** 24. februar 2006 21:34  
**To:** Jan Walle  
**Subject:** RE: Thorunn, Thorgull

Jan / Toby

Sorry for slow reply, basically been traveling since we met in our office.

1. I am trying to keep and ECO model running, either in it's current form (which is quite a lot of work here for just two remaining 3rd party ships)
2. Small pool (honestly) may not work from your perspective - a group of C class ships running without any period charter support means they are extremely exposed to spot market and bunker exposures.
3. T/c option - discussing further .

Will get back to you over next week.

Brgds  
Toby

Toby Moors  
EW / RS New York

---

**From:** Jan Walle [mailto:jw@ott.no]  
**Sent:** Wednesday, February 22, 2006 9:51 AM  
**To:** Moors, Toby  
**Subject:** Thorunn, Thorgull

Hi Toby,

Thank you very much for your hospitality , discussions and the reefer introduction you did for me.  
I hope the snow situasjon is under control in New York. I saw a picture of a man skiing on Manhatten, do you still have a lot of snow ?

Regarding business, I am waiting for your proposal for the possible future deployment of our reefers.

- Is ECO still a possibility ?
- How would a small pool look like ?
- Is the 68 cent plus profit split still an option ?

At last, if you can indicate what type of business we can propose that is not in competition with Knut, that would be great.

**Best Regards**

Jan Walle  
Senior Vice President  
Shipping Division  
O.T.Tønnevoid AS  
Direct line: +47 37 25 88 72  
Mobile: +47 90 03 18 95  
Fax: +47 37 25 88 99

# **EXHIBIT 4**


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## Eastwind Group

- Founded in 1987
- Own/Operate 119 Ships (Dec 2007)

### Operating Segments:

- Containers
- Dry Bulkers
- Reefers/Freezers
- Tankers

### News:

- **October 2007:** EWB orders four new 35,000 Dwt bulkers from Shangkuan
- **September 2007:** Eastwind purchases Silver Wind, 17,000 Dwt tanker
- **August 2007:** Eastwind contracts Cosco for tanker conversions.
- **August 2007:** EWB orders four new Lakers from Shangkuan
- **July 2007:** Eastwind affiliate EWB buys four containerships from Maersk
- **May 2007:** Chiquita sells Great White Fleet to Eastwind/NYK/LauCool
- **May 2007:** Eastwind orders four new Lakers from Shangkuan

### Principal Operating Companies/Affiliates

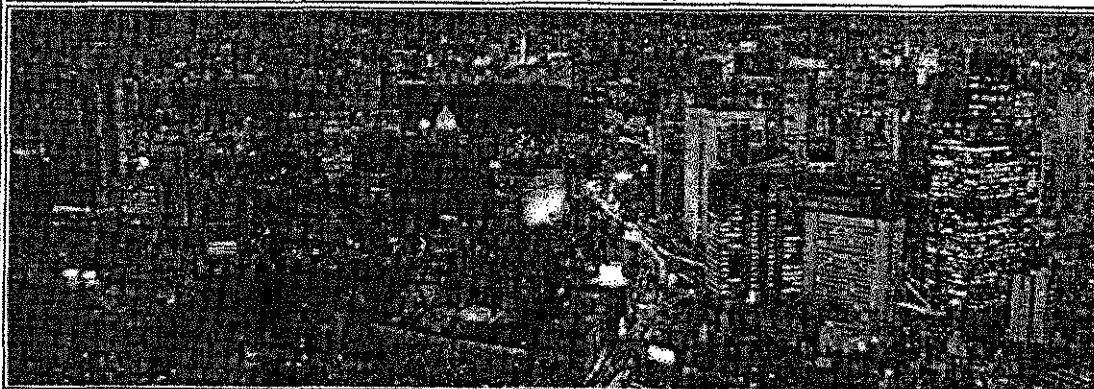
- Atlantic Wind Pool Ltd.
- Eastwind Maritime S.A.
- Eastwind Transport Ltd.
- Eastwind (Hellas) S.A.
- EWB Ltd.
- Eastwind Ltd.
- Eurys Containers Carriers Ltd.
- EW Carriers (UK) Ltd.
- EW Shipmanagement Ltd.
- Eystrasalt LLC.
- Kura Shipping Ltd.

## Eastwind Management Offices

**Eastwind Maritime Inc.**  
 444 Madison Avenue, Suite 200  
 New York, NY 10022  
 Phone: +1-212-838-1113  
 Fax: +1-212-838-8439  
 Eastwind@eastwindgroup.com



**Eastwind Ltd.**  
 Nippon Press Center Bldg, 6th Fl  
 2-2-1 Uchisaiwaicho  
 Chiyoda-ku, Tokyo 100-0011, Japan  
 Phone: +81-3-5511-7071  
 Fax: +81-3-5511-7081  
 ewl@ewltokyo.co.jp



## Eastwind Commercial Offices

<p> <b>Eastwind Carriers (UK) Ltd.</b>                      Third Floor                      3 Southwark Street                      London SE1 1RQ                      England                      Phone: +44-0-207-403-5986                      Fax: +1-866-767-1761                      tankers@eastwindgroup.com</p>	<p> <b>Eastwind Agency Ltd</b>                      Nippon PressCenter Bldg. 6thFL                      2-2-1- Uchisaiwaicho                      100-0011 Tokyo, Japan                      Phone: +81-3-5251-5188                      Fax: +81-3-5251-5088                      sam_shirai@eastwind-agency.co.jp</p>	<p> <b>Eastwind AB</b>                      PO Box 10055                      100 55 Stockholm, Sweden                      Phone: +46-8-753-6720                      Fax: +46-8-622-6624                      reefers@eastwindgroup.com</p>
<p> <b>Eurus Container Carriers Ltd.</b>                      444 Madison Avenue, Suite 200                      New York, NY 10022                      Phone: +1-212-838-1113                      Fax: +1-212-838-8439                      Eastwind@eastwindgroup.com</p>	<p> <b>Eastwind Transport Ltd.</b>                      Suite 904, East Wing,                      ZhongRongHengRui International Plaza,                      No.820 ZhangYang Road, PuDong,                      Shanghai, China 200122                      Phone: +86-21-5062-0011                      Fax: +86-21-5836-2448</p>	<p> <b>ProBulk Carriers Ltd.</b>                      444 Madison Avenue                      New York, NY 10022                      Phone: +1-212-980-1150                      Fax: +1-212-486-0123                      procarriers@eastwindgroup.com</p>

ew-china@hotmail.com		
<b>Eastwind Joint Venture Offices</b>		
 <b>Smart Crewing Ltd.</b> Kaliningrad, Russia, 236000 20, Ozerova Street, 3rd Floor Phone: +4-012-916-864 smartcrewing@qazinter.net	 <b>Multiship Agencia Maritima</b> Rua Dr. Sampaio Viana, 253 Suite 64 04004-000 SÃO PAULO BRAZIL Phone: +55-11-3884 5583 Fax: +55-11-3051 2085 ship@multiship.com.br	
<b>Eastwind Ship Managers' Offices</b>		
 <b>Eastwind Shipmanagement Pte. Ltd.</b> 1 Maritime Square Hex10-21 Harbourfront Centre Singapore 099253 Tel: +65-6-273-3100 Fax: +65-6-272-9497 corporate@ewsmplsingapore.com.sg	 <b>Norbulk Shipping UK Ltd.</b> Norbulk House 88 Glassford Street Glasgow G1 1UP Phone: +44-141-652-3000 Fax: +44-141-559-5250 mail@norbulkshipping.com	 <b>Eastwind Hellas S.A.</b> 6 Skouze Street Piraeus 18536 Greece Phone: +30-1-42-92-485/9 Fax: +30-1-42-92-493 mail@eastwindhellas.gr
 <b>Eastwind Shipmanagement Pte. Ltd.</b> Shanghai Representative Office Suite 904, East Wing, ZhongRongHengRui International Plaza, No.620 ZhangYang Road, PuDong, Shanghai, China 200122 Phone: +86-21-5062-0011 Fax: +86-21-5836-2448 ewsmshanghai@126.com	 <b>Diamond Ship Management N.V</b> The Lofthouse Oude Leeuwennui 7-11 B-2000 Antwerp Belgium Phone: +32-3-293 6167 Fax: +32-3-293 6576 Technical@DiamondShip.Be	 <b>Korea Marine Ltd.</b> Marine Bldg. 4th Floor #84-5, 4-KA Chungang-Dong Chung-Ku, Pusan 600-014, Korea Phone: +82-51-462-1746 Fax: +82-51-463-9041 kmrl@komarine.co.kr



# NYS Department of State

## Division of Corporations

### Entity Information

Selected Entity Name: ECO SHIPPING LTD.

#### Selected Entity Status Information

**Current Entity Name:** ECO SHIPPING LTD.  
**Initial DOS Filing Date:** APRIL 04, 2001  
**County:** NEW YORK  
**Jurisdiction:** DELAWARE  
**Entity Type:** FOREIGN BUSINESS CORPORATION  
**Current Entity Status:** ACTIVE

#### Selected Entity Address Information

**DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)**

C/O C T CORPORATION SYSTEM  
111 EIGHTH AVENUE  
NEW YORK, NEW YORK, 10011

#### Chairman or Chief Executive Officer

JOHN D KOUSI  
444 MADISON AVE STE 200  
NEW YORK, NEW YORK, 10022

#### Principal Executive Office

ECO SHIPPING LTD.  
444 MADISON AVE STE 200  
NEW YORK, NEW YORK, 10022

#### Registered Agent

C T CORPORATION SYSTEM  
111 EIGHTH AVENUE  
NEW YORK, NEW YORK, 10011

NOTE: New York State does not issue organizational identification numbers.

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# **EXHIBIT 5**

# NYS Department of State

## Division of Corporations

### Entity Information

Selected Entity Name: ECO SHIPPING LTD.

#### Selected Entity Status Information

**Current Entity Name:** ECO SHIPPING LTD.

**Initial DOS Filing Date:** APRIL 04, 2001

**County:** NEW YORK

**Jurisdiction:** DELAWARE

**Entity Type:** FOREIGN BUSINESS CORPORATION

**Current Entity Status:** ACTIVE

#### Selected Entity Address Information

**DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)**

C/O C T CORPORATION SYSTEM

111 EIGHTH AVENUE

NEW YORK, NEW YORK, 10011

#### Chairman or Chief Executive Officer

JOHN D KOUSI

444 MADISON AVE STE 200

NEW YORK, NEW YORK, 10022

#### Principal Executive Office

ECO SHIPPING LTD.

444 MADISON AVE STE 200

NEW YORK, NEW YORK, 10022

#### Registered Agent

C T CORPORATION SYSTEM

111 EIGHTH AVENUE

NEW YORK, NEW YORK, 10011


NOTE: New York State does not issue organizational identification numbers.

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## Eastwind Maritime S A Inc

444 Madison Ave Ste 200, New York, NY 10022-6983, United States ([Map](#)) ([Add Company Info](#))

**Phone:** (212) 838-1113

**SIC:** Water Transportation Services, NEC

**Line of Business:** Water Transport Services Oil/Gas Exploration Services Natural Gas Liquids Production

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### Detailed Eastwind Maritime S A Inc Company Profile

This company profile is for the private company Eastwind Maritime S A Inc, located in New York, NY. Eastwind Maritime S A Inc's line of business is water transport services oil/gas exploration services natural gas liquids production.

### Company Profile: Eastwind Maritime S A Inc

**Year Started:** 1987

**State of Incorporation:** N/A

**URL:** N/A

**Location Type:** Single Location

**Stock Symbol:** N/A

**Stock Exchange:** N/A

**Also Does Business As:** N/A

**NAICS:** N/A

**SIC #Code:** 4499

**Est. Annual Sales:** \$4,100,000

**Est. Employees:** 65

**Est. Employees at Location:** 50

**Contact Name:** John D Kousi

**Contact Title:** President

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### Additional Eastwind Maritime S A Inc Company Information

#### Have some information to add about Eastwind Maritime S A Inc?

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# EXHIBIT 8



**ADDENDUM NO. 1**  
**to**

**Charter Party M/V "THORGULL" dated Oslo, 6<sup>th</sup> December, 2006**

**between**

**Eastwind Maritime S.A (as Charterers)**

**and**

**Tønnevold Reefer 7 KS (as Owners)**

-----

It has today been agreed between both parties that:

Vessel on completion Port Harcourt 11<sup>th</sup> February 1042 hours to continue on time charter under the following terms:

Vessel to load frozen fish in Dakhla area for w-Africa or in Chile back to w-Africa.  
Duration about 40-60 days without gurantee.

Hire

February USC 87,5

March USC 115

April USC 92,5

Otherwise terms as per above Charter Party, dated 6<sup>th</sup> December 2006

Oslo, 13th February, 2007

**Eastwind Maritime S.A**

**Tønnevold Reefer 7 KS**

-----

## ***Addendum No 2***

**to Charter Party covering M/V "Thorgull" dated Oslo, 6<sup>th</sup> December, 2006**

**between**

**Eastwind Maritime S.A (as Charterers)**

**and**

**Tønnevold Reefer 2 KS (as Owners)**

-----

**It has today 19<sup>th</sup> April, 2007 been agreed that:**

The vessel will continue on a timecharter trip in direct continuation via Falklands to load squid for Far-East to one or more, in Charterers option, gspb(s) Far-East, excluding Japan/Korea. (The latter until she is de-listed by NEAFC and Owners have confirmed vsl can call Japan/Korea).

Delivery dop 1 gsp port W-Africa 18th April (in direct continuation).

Hire April USC 92.5, May USC 80, June USC 65, July/August USC 50

Otherwise terms as per CP dated 6th December, 2006

**Oslo, 19<sup>th</sup> April, 2007**

**The Owners**

**The Charterers**

-----

***Addendum No 3***

**to Charter Party covering M/V "Thorgull" dated Oslo, 6<sup>th</sup> December, 2006**

**between**

**Eastwind Maritime S.A (as Charterers)**

**and**

**Tønnevold Reefer 2 KS (as Owners)**

-----  
It has today 19<sup>th</sup> July, 2007 been agreed that:

The vessel will continue on a timecharter trip in direct continuation from present time-charter, from DOP Qingdao 18th July 1725 hours, via Indonesia to load cocoa for Colombia, duration about 45 days wog.

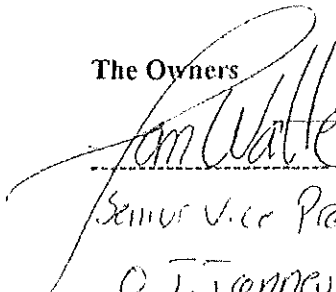
Hire from DOP Qingdao until DOP 1 GSP Colombia, USC 35 per cbft/30 days.

Eastwind to have last refusal to fix the vessel at market level for a new voyage, to be proposed/discussed.

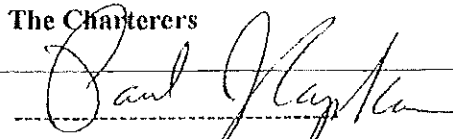
Otherwise terms as per Charter Party dated 6th December, 2006

**Oslo, 19<sup>th</sup> July, 2007**

**The Owners**

  
Senior Vice President  
O.T. Tønnevold AS  
Manager for  
Tønnevold Reefer 2 KS

**The Charterers**

  
S. V. President  
Eastwind Maritime S.A.